

PO9661/6

# Salary Statement



International  
Labour  
Office  
Geneva

# Protection of Wages

Standards and safeguards  
relating to the payment  
of labour remuneration



	Description	
100	Monthly salary	
200	Gross salary	
610	Deductions 01	
612	Deductions 02	
615	Deductions 03	
	Net salary	4.3
	Leaves balance	4.3

Gross Salary



NET SALARY

Deductions

- Health insurance . . . . .
- Pension fund . . . . .
- Housing loan . . . . .

International Labour Conference

91st Session 2003

Report III (Part 1B)

Third item on the agenda:  
Information and reports on the application  
of Conventions and Recommendations

General Survey of the reports  
concerning the Protection of Wages Convention (No. 95) and  
the Protection of Wages Recommendation (No. 85), 1949

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

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## INTRODUCTION

### **Background and scope of survey**

1. In accordance with article 19, paragraph 5(e), of the Constitution of the International Labour Organization, the Governing Body of the International Labour Office, at its 279th Session (November 2000), decided to invite the governments of member States which have not ratified the Protection of Wages Convention, 1949 (No. 95), to submit a report on national law and practice in regard to the matters dealt with in this instrument.<sup>1</sup> By the same decision, and in accordance with article 19, paragraph 6(d), of the Constitution, the governments of all member States were invited to submit a report on national law and practice in regard to the matters dealt with in the Protection of Wages Recommendation, 1949 (No. 85), which supplements the above instrument. These reports, in addition to those submitted in accordance with articles 22 and 35 of the ILO Constitution by States which have ratified the Convention, have enabled the Committee of Experts on the Application of Conventions and Recommendations to prepare its first General Survey on the effect given in law and practice to the instruments under consideration.<sup>2</sup>

### **ILO standard-setting activities relating to the protection of wages**

2. Remuneration is, together with working time, the aspect of working conditions that has the most direct and most tangible impact on the day-to-day lives of workers. Since its earliest days, the International Labour Organization has placed the questions of decent wage levels and fair labour remuneration practices at the centre of its action and has advocated labour standards seeking to guarantee and protect the rights of workers in respect of wages. The Constitution of the Organization, originally established in 1919 as Part XIII of the Peace

<sup>1</sup> See GB.279/205, para. 33.

<sup>2</sup> Mention should be made, however, of the special survey carried out by the Committee on the occasion of the Organization's 50th anniversary regarding the obstacles to implementation and the ratification prospects of 17 selected Conventions, including [Convention No. 95](#); see "The ratification outlook after 50 years: Seventeen selected Conventions", ILC, 53rd Session, 1969, Report III (Part 4), pp. 181-260.

Treaty of Versailles, referred to the “provision of an adequate living wage” as one of the improvements urgently required to promote universal peace and combat the social unrest, hardship and privation affecting large numbers of people. It listed among the methods and principles which were considered to be well-fitted to guiding the policy of member States “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”. The 1944 Declaration of Philadelphia concerning the aims and purposes of the Organization reaffirms that “poverty anywhere constitutes a danger to prosperity everywhere” and emphasizes the need for world programmes which will achieve “policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all and a minimum living wage to all employed and in need of such protection”.

3. Contrary to the problem of minimum wage regulation, which attracted the attention of the International Labour Conference much earlier, and resulted in the adoption of the Minimum Wage-Fixing Machinery Convention (No. 26) in 1928, the question of adopting standards designed to regulate the medium of wage payment, as well as such other aspects as wage deductions, the attachment of wages and wage guarantees in case of bankruptcy, was only brought before the Conference some 30 years after the Organization had come into being. Until then, the Conference had given only incidental consideration to the problems of the protection of wages through the adoption of a number of resolutions, as well as some provisions in Conventions and Recommendations. At its 19th Session in 1935, for instance, the Conference adopted a resolution inviting the Office to undertake an inquiry into the “truck system”, i.e. the obligation to spend wages on goods supplied by employers and related practices, but the inquiry was later suspended because of the outbreak of the Second World War. At its 25th Session in 1939, the Conference included in the Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64), certain provisions relating to the question of the protection of wages, in the form of a requirement that contracts of employment are to contain particulars concerning, inter alia, the rate of wages, the method of wage calculation, the manner and periodicity of wage payments, and advances of wages. Finally, the Social Policy (Non-Metropolitan Territories) Convention (No. 82), adopted at the 30th Session of the Conference in 1947, contains specific provisions on workers’ remuneration and, in particular, provisions on the payment of wages in legal tender and at regular intervals, wage deductions, record-keeping and wage statements, payments in kind, the place of wage payment and advances on wages. These principles had been for the most part enunciated in the Social Policy in Dependent Territories Recommendation (No. 70) adopted in 1944 by the 26th Session of the Conference, and in the Social Policy in Dependent Territories (Supplementary Provisions) Recommendation (No. 74), adopted in 1945 at the 27th Session of the Conference.

4. The idea of the possible adoption of an international instrument specifically addressing the problems of the protection of wages was first put

forward in a report on the “Future policy, programme and status of the International Labour Organisation”, prepared by the Office for the 26th Session of the Conference in 1944. While emphasizing that “wage policy lies at the core of the preoccupations of the International Labour Organisation”, the report suggested that “a Convention or Recommendation on methods of wage payment dealing with the periodicity of wage payments, deductions from wages, advances of wages, the prohibition of truck, the adequacy of remuneration in kind, the protection of wages in legal proceedings and similar subjects would also be of great value in relation to many parts of the world, especially in regard to rural workers”.<sup>3</sup>

5. The Governing Body decided at its 101st Session (March 1947) to place on the agenda of the 31st Session of the International Labour Conference three wage-related items, i.e. the protection of wages, the fair wages clause in public contracts and the general subject of the regulation of wages and wages policy. While the first two items were placed on the agenda under the usual double-discussion procedure with a view to adopting new standard-setting instruments, the third item was only included for the purpose of a general discussion to enable the Conference to consider all aspects of wages policy and formulate a programme for future action in this field.<sup>4</sup>

6. The preliminary report prepared by the Office for the 31st Session of the International Labour Conference at San Francisco introduced the subject in these terms:

... the general purpose of legal measures for the protection of wages is to guarantee the worker against practices which would tend to make him unduly dependent on his employer and to ensure that he receives promptly and in full the wages which he has earned. To achieve these ends it is necessary that he should normally receive his wages in the form of money which he can spend as he wishes, that he should be paid regularly and at intervals short enough to allow him to live on a cash rather than a credit basis, that he should be protected against any unjustified or arbitrary deductions from his nominal earnings and, in general, that he should be kept informed of his wage conditions of employment.<sup>5</sup>

7. In the event, after two Conference discussions and often lively debate, especially regarding issues such as the prohibition of the payment of wages in the form of alcoholic drinks and the conditions of operation of works stores, the Convention and the Recommendation concerning the protection of wages were adopted. [Convention No. 95](#) and [Recommendation No. 85](#) are the first two international labour instruments dealing in a comprehensive manner with aspects

<sup>3</sup> See ILC, 26th Session, 1944, Report I, p. 51.

<sup>4</sup> See *Wages: (a) General Report*, ILC, 31st Session, 1948, Report VI(a); *Wages: (b) Fair Wages Clause in Public Contracts*, Reports VI(b)(1) and VI(b)(2); *Wages: (c) Protection of Wages*, Reports VI(c)(1) and VI(c)(2).

<sup>5</sup> See ILC, 31st Session, 1948, Report VI(c)(1), p. 3.

such as the form and manner of the payment of wages and seeking to accord the fullest possible protection to workers' remuneration.<sup>6</sup>

8. In the years following the adoption of the Convention, provisions with direct relevance to the protection of wages were included in several other ILO instruments. For instance, the Plantations Convention, 1958 (No. 110), contains a special part on wages which reproduces textually certain provisions of [Convention No. 95](#), such as Article 3, paragraph 1, on the prohibition of the payment of wages in the form of promissory notes, vouchers or coupons, Article 5 on the direct payment of wages to the worker concerned, Article 6 on the freedom of workers to dispose of their wages, Article 7 on works stores, Article 8 on wage deductions, Article 9 on the prohibition of any deduction or indirect payment for the purpose of retaining employment, Article 12 on the regular payment of wages, Article 14 on the notification of wage conditions to workers and Article 15 on enforcement measures. Similarly, the provisions of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), which refer to the remuneration of workers draw heavily on the principles set out in [Convention No. 95](#), such as the payment of wages in legal tender only, the prohibition of the substitution of alcohol or other spirituous beverages for all or any part of wages, the obligation to pay wages directly to the individual worker and at regular intervals, the need to ensure when food, housing or clothing form part of remuneration that such supplies are adequate and their cash value is properly assessed, the requirement to keep workers informed of their wage rights and also the need to prevent unauthorized deductions.

9. Mention should also be made of the Migration for Employment Convention (Revised) (No. 97) and Recommendation (Revised) (No. 86), 1949, which deal in part with matters related to the remuneration of migrant workers, including the principle of non-discrimination and equal treatment of migrant workers in respect of remuneration, which encompasses family allowances, overtime and holidays with pay (Article 6, paragraph 1(a)(i)), the free transfer of their earnings (Article 9 of the Convention and Paragraph 10(c) and (d) of the Recommendation) and the insertion of provisions indicating the wage conditions into the contract of employment (Annex II, Article 6, paragraph 1(b)). The Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99), also contains a provision regulating the partial payment of minimum wages in the form of allowances in kind in terms that are practically identical to those used in Article 4 of [Convention No. 95](#). Moreover, the Equal Remuneration Convention, 1951 (No. 100), includes a definition of the term "remuneration" which is similar to the definition of the term "wages" contained in Article 1 of [Convention No. 95](#).

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<sup>6</sup> For the Conference discussions, see ILC, 31st Session, 1948, *Record of Proceedings*, pp. 459-469, and ILC, 32nd Session, 1949, *Record of Proceedings*, pp. 324-332, 499-524.

**10.** Finally, reference should be made to the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), which partially revises Convention No. 95 with regard to the preferential treatment of workers' wage claims in the event of the bankruptcy or judicial liquidation of an enterprise. Under Article 3, paragraph 6, of Convention No. 173, acceptance by a member State of the obligations of Part II of the Convention dealing with the protection of workers' claims by means of a privilege *ipso jure* terminates its obligations under Article 11 of Convention No. 95. The provisions of Convention No. 173, especially those of Part III concerning the protection of workers' claims by a guarantee institution, are analysed in Chapter V below.

ILO instruments containing standards related to the protection of wages	Number of ratifications (as at 13.12.02)
<b>I. Fundamental Conventions</b>	
– Equal Remuneration Convention, 1951 (No. 100), Art. 1; General Survey, 72 <i>ILC</i> , 1986, Report III (Part 4B)	156
<b>II. Wage-related Conventions and Recommendations</b>	
– Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and Recommendation (No. 30); General Survey, 79 <i>ILC</i> , 1992, Report III (Part 4B)	103
– Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99), and Recommendation (No. 89); General Survey, 79 <i>ILC</i> , 1992, Report III (Part 4B)	52
– Minimum Wage Fixing Convention, 1970 (No. 131), and Recommendation (No. 135); General Survey, 79 <i>ILC</i> , 1992, Report III (Part 4B)	44
– Labour Clauses (Public Contracts) Convention, 1949 (No. 94), and Recommendation (No. 84)	59
– Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), and Recommendation (No. 180)	14
<b>III. Other instruments</b>	
– Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64), Art. 5(2)(e)	31
– Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), Arts. 15-17	4
– Migration for Employment Convention (Revised), 1949 (No. 97), and Recommendation (Revised) (No. 86), Arts. 6(1)(a), 9; Annex II, Art. 6(1)(b); General Survey, 87 <i>ILC</i> , 1999, Report III (Part 1B)	42
– Plantations Convention, 1958 (No. 110), Part IV, Arts. 26-35	12
– Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Arts. 11-13	32

11. The Committee also recalls that on three occasions in recent years it has undertaken general surveys on wage-related subjects, including the establishment of minimum wage fixing machinery, the principle of equal remuneration and the protection of migrant workers.<sup>7</sup>

### **Other international instruments relevant to the protection of wages**

12. Standards on the protection of wages are also to be found in certain other international legal instruments adopted by regional organizations, such as the revised European Social Charter, which entered into force in 1999, and the Arab Convention No. 15 concerning the determination and protection of wages, which was adopted by the Arab Labour Conference in 1983.

13. Under Article 4, paragraph 5, of the European Social Charter of 1961 and the revised European Social Charter of 1996, the Contracting Parties undertake to “permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards”, while in its new Article 25 the Charter provides that “workers’ claims arising from contracts of employment or employment relationships [must] be guaranteed by a guarantee institution or by any other effective form of protection”.<sup>8</sup>

14. Reference should also be made to the Community Charter of the Fundamental Social Rights of Workers, adopted in 1989 by the Heads of State and Government of 11 Member States of the European Community, which sets out a number of rights that should be guaranteed to all European citizens. Even though the Community Charter is a political declaration and not a legally binding document, it expresses the new social policy of the European Union. It provides that “wages may be withheld, seized or transferred only in accordance with national law; such provisions should entail measures enabling the worker concerned to continue to enjoy the necessary means of subsistence for him or

<sup>7</sup> See *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, ILC, 79th Session, 1992, Report III (Part 4B); *General Survey of the Reports on the Equal Remuneration Convention (No. 100) and Recommendation (No. 90)*, 1951, ILC, 72nd Session, 1986, Report III (Part 4B); *General Survey of the Reports on the Migration for Employment Convention (Revised) (No. 97), and Recommendation (Revised) (No. 86)*, 1949, and *the Migrant Workers (Supplementary Provisions) Convention (No. 143), and Recommendation (No. 151)*, ILC, 87th Session, 1999, Report III (Part 1B).

<sup>8</sup> See Council of Europe, *European Social Charter – Short Guide*, Council of Europe Publishing, Sep. 2000. See also [http://www.coe.int/T/E/Human\\_Rights/Esc/](http://www.coe.int/T/E/Human_Rights/Esc/) and <http://conventions.coe.int/treaty/en/treaties/html/163.htm>.

herself and his or her family” and suggests that the improvement of living and working conditions “must cover, where necessary, the development of certain aspects of employment regulations such as procedures for collective redundancies and those regarding bankruptcies”. Among the numerous directives adopted with a view to the implementation of the rights guaranteed in the Charter, some refer to matters dealt with in [Convention No. 95](#), such as Directive 91/533/EEC of 14 October 1991 on an employers’ obligation to inform workers of the conditions applicable to the employment contract or relationship and Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer.

**15.** As regards the Arab Convention No. 15 concerning the determination and protection of wages, it reflects to a large extent the provisions of [Convention No. 95](#), in particular those referring to the payment of wages on working days and at the workplace, the freedom of workers to dispose of their wages, the limitation of wage attachment to the extent deemed necessary to meet the basic requirements of the workers and their families and the payment of all entitlements and benefits due to a worker upon termination of employment. In certain respects, however, the Arab Convention No. 15 goes further than [Convention No. 95](#) and prescribes, for instance, that “wages and sums due to a worker under a contract of employment [must be treated as] a privileged debt ranking in priority over all other debts including those due to the State”. Moreover, the Convention requires that the amounts of disciplinary fines always be expended in the interests of workers and fixes at 10 per cent of the worker’s wage the limit for deductions in repayment of loans or debts, free of any charge, due to the employer.

### **Principles and standards embodied in [Convention No. 95](#) and [Recommendation No. 85](#)**

**16.** The instruments examined concern protection of wages and are based on the premise that wages are necessary and intended for the maintenance of workers and their families. To this end, the instruments provide for a legal protection of wages which reinforces and complements the protection provided under domestic law. The provisions contained in the instruments all embody one common principle: that of ensuring prompt payment of wages directly to the worker. A number of these provisions are directed at the employer as the party owing and directly responsible for payment of wages, and require that workers be allowed full freedom to dispose of their wages. However, the instruments under consideration, like civil legislation in many countries, also lay down rules to protect workers from an employer’s creditors and from their own by limiting the attachment or assignment of wages and establishing specific priorities for payments to employer’s creditors, which implies certain restrictions with regard to the free disposal and transfer of funds vis-à-vis third parties. These different



perspectives make Convention No. 95 a complex instrument, but also mean that it can be understood as a part of a system intended to provide comprehensive protection of wages. Its different provisions are interrelated and complement one another; this makes it difficult to examine in isolation individual Articles, which are mutually interdependent and constitute a coherent system that hinges on five main elements: (i) the form and method of wage payment; (ii) the freedom of workers to dispose of their wages; (iii) the duty of information; (iv) wage guarantees; and (v) enforcement.

**17.** With regard to the form and method of payment, the Convention sets out a number of principles as to *where*, *when* and *how* remuneration is to be paid and other practical modalities of payment. It requires payment of money wages in legal tender only and prohibits the use of promissory notes, vouchers or coupons instead of cash, although it specifically allows for non-cash methods of payment by bank cheque, postal note or money order in particular specified circumstances. There is no reference in the Convention to payment by electronic transfer which is discussed in paragraph 84 hereof. The Convention recognizes that labour remuneration may also include benefits in kind, on condition that such benefits are provided only in partial settlement of the wages owed, that they satisfy the needs of the workers and their families and that they are fairly and reasonably valued. Moreover, the Convention stipulates that wages must be paid regularly, directly and at such place and time as to avoid any risk of abuse. The Recommendation deals with the periodicity of wage payment in greater detail, suggesting that workers whose wages are calculated by the hour, day or week should be paid not less often than twice a month, while salaried employees should be paid monthly.

**18.** A second group of provisions seeks to guarantee the freedom of workers to dispose of their wages. To this end, the Convention forbids any constraint by the employer on the manner in which the worker's wage is used or spent and recognizes the right of workers to make use of a company store or service only if they so wish. The Convention further calls for appropriate measures to ensure that works stores are not operated for the purpose of securing profit to the employer, but for the benefit of the workers concerned, and that the goods are sold at fair and reasonable prices. In this respect, the Recommendation refers to measures aimed at encouraging the participation of workers' representatives in the administration of works stores or similar services.

**19.** Thirdly, the Convention attaches particular importance to the need to keep workers informed in an appropriate and easily understandable manner of the wage conditions to which they are subject before they enter employment, and of the wage details concerning the calculation of their earnings in respect of each pay period. The Recommendation contains detailed provisions on the wage conditions which should be brought to the knowledge of the worker before signing a contract of employment and specifies the particulars to be indicated in the worker's pay slip or wage statement at the time of each payment. As an essential prerequisite for workers to be amply and correctly informed of their

earnings, the Convention and the Recommendation also provide for the maintenance of adequate wage records.

**20.** The fourth aspect covered by the Convention consists of wage guarantees designed to ensure the total payment of the wages due and protect workers from arbitrary, unfair or unforeseen decreases in their remuneration, in particular through excessive deductions or attachment orders or on account of the closure of a bankrupt enterprise. In recognition of the essential nature of wages for the maintenance of workers and for the subsistence of their families, the Convention sets forth the principle that deductions should be permitted only under prescribed conditions and within specific limits, and that such conditions and limits should be required to be brought to the notice of the workers. In this connection, the Recommendation offers guidance with respect to two specific types of wage deductions, namely deductions for loss or damage to the employer's products, goods or installations, and deductions for tools, materials or equipment supplied by the employer. The Convention further stipulates that a portion of the worker's wages should be immune from attachment or seizure, and that special treatment should be accorded to wage claims in the event of the bankruptcy or judicial liquidation of an enterprise. The Convention however leaves it to national laws and regulations to determine the relative priority of wages as privileged debts and the overall limits within which unpaid wages are to be treated preferentially.

**21.** Finally, the Convention addresses the question of enforcement and emphasizes the need for implementing laws capable of ensuring adequate supervision and effective sanctions or other remedies in order to prevent and punish infringements.

### **Present-day relevance of wages protection**

**22.** At first glance, some of the provisions of the Convention may appear to bear little relevance to the working conditions and remuneration practices currently prevailing in most countries, both developed and developing. It would be tempting, for instance, to dismiss the prohibition upon payment of wages in alcohol, set out in Article 4 of the Convention, as a provision that is barely meaningful in the context of modern labour conditions. It might be argued that the same applies to the requirement for the regular payment of wages, laid down in Article 12 of the Convention, or the proscription of vouchers and coupons as means of the payment of wages under the terms of Article 3 of the Convention.

**23.** In the view of the Committee, these arguments should be taken with reservation. While there can be no doubt that many of the principles endorsed in the Convention are already solidly entrenched in the law of a great number of countries, this is far from being the case everywhere. What is more, the progress that has clearly been made in this field cannot exclude the risk of major difficulties being encountered in the practical application of these basic principles. Reference only has to be made to the accumulation of wage arrears,

in flagrant violation of the letter and spirit of Article 12 of the Convention, which has reached alarming proportions in several countries around the world affecting tens of millions of workers. The payment of wages, in whole or in part, in bonds, alcohol or manufactured goods, contrary to the requirements of Articles 3 and 4 of the Convention, has ceased to be an isolated phenomenon in certain countries, where it is tending to pervade the fabric of the national economy in its entirety. For example, the non-payment or delayed payment of salaries has been a severe problem in several African countries for nearly two decades, particularly in public and semi-public sectors of employment. The problem is particularly acute in the *Central African Republic*, where wage arrears are as high as 42 months. But other countries, including *Benin, Chad, Côte d'Ivoire, Guinea-Bissau, Madagascar, Niger, Senegal* and *Togo*, are also affected.<sup>9</sup> The resulting impoverishment often induces corruption and extortion and, even worse, sometimes reduces workers to situations close to slavery.<sup>10</sup> Debt bondage, or forced labour imposed as repayment for a loan, persists in several countries throughout the world, principally in India, Pakistan and *Brazil*, through a system of abusive pay practices intended to increase indebtedness and condemn the worker to slavery for life.<sup>11</sup> According to some sources, nearly 14 million workers in China were owed US\$3.9 billion in wage arrears in 2000.<sup>12</sup>

**24.** Certain transition economies in Central and Eastern Europe continue to struggle with wage debts, barter and demonetization. Most of these phenomena, which are the legacy of centrally planned economies and institutions and policies inherited from them, are also linked to problems and delays in structural reforms, especially in areas such as the fiscal system, bankruptcy legislation, corporate governance and the accountability of state organs. This only serves to aggravate the situation of workers in so far as the

<sup>9</sup> See, for instance, Ibrahim Mayaki, "Unpaid salaries in Africa: An explosive issue" and André Linard, "Wage debt – Africa's other plague", in *Labour Education*, No. 128, 2002/3, pp. 17-24.

<sup>10</sup> By way of example, during the war in the *Democratic Republic of the Congo*, unpaid public servants had no other choice than to contract debts with exorbitant interest rates and were forced to do agricultural work on the moneylenders' farms, while some sold their children to repay their debt; see World Confederation of Labour (WCL), *Slavery today – Annual report on workers' rights 2001*, pp. 18-43.

<sup>11</sup> In 1999, the United Nations Working Group on Contemporary Forms of Slavery estimated the number of people forced into debt bondage at 20 million. Among the recommendations adopted at its twenty-fifth session, in July 2000, the Working Group invited member States to ratify the ILO Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), "which is concerned in particular with reducing forms of wage payment that foster indebtedness"; see E/CN.4/Sub.2/2000/23, which may be accessed at [www.unhcr.ch/html/menu2/i2slavwg.htm](http://www.unhcr.ch/html/menu2/i2slavwg.htm). For more, see *Stopping forced labour – Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, ILO, 2001, pp. 32-43.

<sup>12</sup> See Gerard Greenfield and Tim Pringle, "The challenge of wage arrears in China", in *Labour Education*, No. 128, 2002/3, p. 31.

payment of their wages is concerned. By way of example, the Government of the *Russian Federation* has indicated that, as at January 2002, some 7.3 million workers employed in 44,000 enterprises had not received their wages on time and that wage arrears stood at 29.9 billion roubles (approximately US\$1 billion). Moreover, according to information supplied by the Federation of Trade Unions of Ukraine, some 2.7 million workers, or one-fifth of the total workforce, are still experiencing wage delays which often exceed six months. The payment of wages to workers in *Argentina* in the form of non-freely exchangeable local government bonds has become a generalized practice in the past two years, thereby further deepening the financial and social crisis of the country.<sup>13</sup>

**25.** It also appears that the severe problems caused by abusive pay practices or by the non-payment of wages by employers, on time or at all, may impact disproportionately upon women workers and their families. This is because the sectors of work where such practices occur frequently have a predominantly female workforce, and also because in workforces where there are both men and women workers priority is given to men workers when employers decide to pay wages to some of the workforce. It is a matter of considerable concern to the Committee that the inequality of treatment in remuneration, which exists between men and women workers and upon which the Committee has commented previously in its General Survey in 1986 on [Convention No. 100](#), requiring equal remuneration for work of equal value, extends in addition into the area of non-payment of wages.

**26.** However, problems related to the protection of wages are also experienced in some of the most developed economies. Recent events demonstrate that certain increasingly popular remuneration arrangements may carry substantial risk for employees. In particular, in the last 20 years there has been a growing trend in certain countries for employers to terminate private pension plans using the defined benefit formula and to institute a new plan on a defined contribution model. In the former, the benefit to be received by the worker upon retirement is defined, and thus there is a set payment that can be calculated. In the latter type of plan, the employer commits to contributing a stipulated amount into an individual account over which the worker may have some choice of investment vehicles. In such defined contribution plans, workers bear the risk of investment decisions, risks that they may not well understand. The appearance of stock option plans has further heightened this risk, especially where much of an employee's assets in an individual account are invested in the stock of one company. When that one company happens also to be the employer, the risk to the worker is greatly increased. This was demonstrated when the American company Enron collapsed in 2001, with 12,000 workers losing their

<sup>13</sup> Moreover, in several cities, people trade goods and services in "swap clubs" using locally printed vouchers – yet another form of quasi-money, whose issuance is even more unrestrained; see "Scraping through the great depression: Argentina's collapse", in *Economist*, 1 June 2002, p. 35.

retirement savings.<sup>14</sup> As the grant of stock options in the remuneration packages of senior corporate executives often incentivizes executives to maximize the stock price, an action that benefits shareholders and also themselves, there is a risk that executives might take action which artificially inflates the price of the company's stock. Workers may well not be aware of this and, on seeing the price of the stock going up, may be induced to increase their own holdings.<sup>15</sup> The risk inherent in any investment and in non-diversification of equity assets, combined with the greater risk found in many company stock option plans make it critically important that governments ensure that laws relating to securities, pensions, accounting procedures and corporate governance are adequate to the tasks of providing the transparency which should be the appropriate basis for workers' remuneration, especially for those designed to provide retirement income.

27. At another level, the income security of workers would seem to be seriously threatened by developments in bankruptcy law. It is a matter of some concern that, under the persistent urging of the World Bank and the International Monetary Fund, many developing countries are in the process, or are considering revising their existing insolvency legislation, to give priority to the claims of certain creditors, such as banking institutions, abandoning the preference traditionally accorded to workers' wage claims, as reflected in Article 11 of the Convention and further reaffirmed in Articles 5 to 8 of the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173).<sup>16</sup>

<sup>14</sup> It is estimated that over \$60 billion in shareholder value was lost, much of it held by pension funds and individual retirement savings. At the time of bankruptcy, over 60 per cent of the assets in Enron's pension plan were invested in company stock. Under Enron's pension plan, the company matched employee contributions with company stock and prohibited employees from selling shares until the age of 50; see [http://www.aflcio.org/paywatch/case\\_enron.htm](http://www.aflcio.org/paywatch/case_enron.htm). See also "The merits of diversion: Pensions in America", in *Economist*, 15 Dec. 2001, p. 10.

<sup>15</sup> Moreover, stock options and the accounting treatment of such schemes were recently found at the heart of some of the worst corporate scandals in the United States, as in the case of WorldCom; see "Use and abuse: Stock options", in *Economist*, 20 July 2002, p. 14.

<sup>16</sup> As a recent publication of the Legal Department of the International Monetary Fund (IMF) concludes, "the inclusion of statutory privileges, while they may be considered necessary for social or political reasons, should be limited to the extent possible since they generally undermine the effectiveness and efficiency of insolvency proceedings"; see *Orderly and effective insolvency procedures – Key issues*, 1999 – also available at <http://www.imf.org/external/pubs/ft/orderly/index.htm>. Similarly, the draft legislative guide on insolvency law, which is currently under preparation by the United Nations Commission on International Trade Law (UNCITRAL), notes in respect of privileged claims: "some priorities are based on social concerns that may more readily be addressed by non-insolvency law such as social welfare legislation than by designing an insolvency law to achieve social objectives which are only indirectly related to questions of debt and insolvency. Providing a priority in the insolvency law may at best afford an incomplete and inadequate remedy for the social problem, while at the same time rendering the insolvency process less effective"; see A/CN.9/WG.V/WP.63/Add.14 of 14 October 2002 at para. 428 – also available at <http://www.uncitral.org/en-index.htm>.

### **The Protection of Wages Convention and the Working Party on Policy regarding the Revision of Standards**

**28.** The Working Party on Policy regarding the Revision of Standards was set up by the Governing Body in March 1995 for the purpose of assessing current needs for the revision of standards, examining the criteria that could be applied to revision and analysing the difficulties and inadequacies of the standard-setting system with a view to proposing effective practical measures to remedy the situation.<sup>17</sup> The Working Party has held 13 meetings and has conducted a case-by-case examination of the Conventions and Recommendations. It has formulated a significant number of proposals, which have been unanimously approved by the Committee on Legal Issues and International Labour Standards (LILS) and the Governing Body. To date, its work has resulted in decisions being adopted by the Governing Body on 181 Conventions and 191 Recommendations, in which it recommends the Office and member States to take a series of measures.<sup>18</sup>

**29.** For the third meeting of the Working Party (November 1996), the Office prepared a document in which 28 Conventions, including Convention No. 95, were examined with a view to deciding on the possible need for their revision. The Office drew attention to the fact that [Convention No. 95](#) had been classified by the Working Parties of 1979 and 1987 as being among the instruments to be promoted on a priority basis.<sup>19</sup> It also suggested that it would be appropriate to invite member States, in particular those bound by Convention No. 95, to contemplate ratifying [Convention No. 173](#), which contains fuller and more up-to-date provisions on wage protection in cases of the insolvency or winding-up of an enterprise. The question was nevertheless raised as to whether certain aspects of the payment of wages to migrant workers were satisfactorily covered by the existing provisions of the Convention. The Working Party and the Governing Body therefore decided to request member States for information on the changes that have occurred or any difficulties inherent in the Convention, with a view to re-examining its status at a subsequent meeting.<sup>20</sup>

**30.** At the sixth meeting of the Working Party (March 1998), the Office presented the results of the consultations on possible obstacles and difficulties to ratification, and possible needs for the revision of the Convention. Based on the

<sup>17</sup> The decision was taken following the discussions on standard-setting policy at the 82nd Session of the International Labour Conference in 1994 on the occasion of the 75th anniversary of the ILO. The mandate of the Working Party is annexed to GB.267/LILS/WP/PRS/2.

<sup>18</sup> See [GB.283/LILS/WP/PRS/1/2](#).

<sup>19</sup> See Final Report of the Working Party on International Labour Standards, in *Official Bulletin*, Special Issue, Series A, Vol. LXII, 1979, p. 16, and Report of the Working Party on International Labour Standards, in *Official Bulletin*, Special Issue, Series A, Vol. LXX, 1987, p. 30.

<sup>20</sup> See GB.267/LILS/WP/PRS/2, pp. 14-15, and GB.267/9/2, para. 14(b)(iv).

replies of 34 member States, the Office considered that the continued relevance and importance of the Convention was not in question, especially in view of the fact that ratification was imminent or under consideration in five member States. It also noted that, although several obstacles had been reported concerning various provisions of the Convention, no proposals for a revision of the Convention had been made in that respect. Moreover, it was recalled that the specific question of the payment of wages by bank or electronic transfer, which had been mentioned by several member States, had been raised and resolved positively in an informal Office interpretation at the request of the German Government in 1954. The Employer members felt that States should not be invited to ratify [Convention No. 173](#), as its scope was much wider than that of [Convention No. 95](#). The Worker members stated that the simultaneous reference to both instruments did not raise any problems, but noted that the issue of the protection of migrant workers' wages should also be examined. In these circumstances, the Governing Body approved the Working Party's proposal to invite member States to examine the possibility of ratifying [Convention No. 95](#) and to draw their attention to [Convention No. 173](#), which revises Article 11 of [Convention No. 95](#).<sup>21</sup>

**31.** In light of the above, the Governing Body has decided to include [Convention No. 95](#) among the Conventions considered as up-to-date and of which the ratification should be encouraged because they continue to respond to current needs.<sup>22</sup>

### **Status of ratification**

**32.** The Protection of Wages Convention, 1949 ([No. 95](#)), came into force on 24 September 1952. As at 13 December 2002, it has received 95 ratifications, thus being one of the most widely ratified ILO Conventions, apart from the fundamental and priority Conventions. The most recent instrument of ratification was registered on 2 August 2001 (*Albania*), while in the last ten years the Convention has been ratified by eight more member States (*Azerbaijan, Botswana, Czech Republic, Kyrgyzstan, Republic of Moldova, Saint Vincent and the Grenadines, Slovakia and Tajikistan*). The list of States which are currently bound by the terms of the Convention is given in [Appendix I](#).

**33.** To date, the Convention has been denounced by one member State, the United Kingdom, on 16 September 1983. At the time of communicating its instrument of denunciation to the Director-General of the Office for registration, the Government of the United Kingdom stated that it intended to repeal the Truck Acts of 1831, 1887, 1896 and 1940 and related legislation, which were the main instruments giving effect to the provisions of the Convention, in order to

<sup>21</sup> See [GB.271/LILS/WP/PRS/2](#), paras. 68-78, and [GB.271/11/2](#), para. 15.

<sup>22</sup> See [GB.283/LILS/WP/PRS/1/2](#), para. 17.

enable more progress in encouraging the trend towards the payment of wages by modern methods. It also notified the Office of its decision to introduce up-to-date legislation concerning wage deductions in view of the widespread feeling that statutory protections in this respect should be revised and made available to all employees. As, however, the Government was not able to anticipate at that stage how far the new legislation would affect the country's ability to satisfy the terms of the Convention, it had been decided that the right course was to formally denounce the Convention. The Government also indicated that, following the enactment of the proposed legislation, it would reconsider whether the new legislation adequately satisfied the obligations contained in the Convention, or in any revision of its provisions that might be contemplated by the International Labour Organization, so as to enable the United Kingdom to ratify it again.<sup>23</sup>

### Information available

**34.** For the present survey, the Committee had before it 138 reports submitted by 95 member States in conformity with article 19 of the ILO Constitution.<sup>24</sup> Moreover, according to its usual practice, the Committee has also made use of the information contained in reports submitted under articles 22 and 35 of the Constitution by those member States which have ratified the instrument under consideration. Finally, the Committee has duly taken into account the observations of employers' and workers' organizations.

**35.** The Committee commends the large number of governments which have communicated reports on the instruments under consideration. At the same time, however, it should be stated that many of the reports furnished by governments do not contain such detailed information as might have been expected. The Committee deems it appropriate to emphasize that governments should make greater efforts to communicate the information requested in a comprehensive and timely manner. The Committee recalls that regular and thorough reporting is an obligation inherent to membership of the Organization and which is also crucial to the functioning of the Organization's supervisory bodies. Moreover, the Committee deeply regrets that, despite having been noticed, no more than 22 workers' and employers' organizations from only 13 member States took the opportunity offered by article 23 of the ILO Constitution to express their views on a subject which is being covered by a General Survey

<sup>23</sup> It should be noted that, by separate declaration registered in 1987, the authorities of Gibraltar indicated that the United Kingdom's denunciation should extend to them. Similar declarations were registered in 1993 in respect of Jersey and the Isle of Man so that these territories are no longer bound by the Convention. In contrast, no such declaration has yet been made on behalf of *Montserrat*, which thus continues to be bound by the terms of the Convention.

<sup>24</sup> Full indications on the reports due and supplied by each country are contained in [Appendix I](#).



for the first time and which is of such critical and direct importance for the day-to-day lives of workers.<sup>25</sup> The Committee cannot overemphasize the particular significance attributed to the comments of employers' and workers' organizations in respect of the difficulties and dilemmas that the application of ILO standards may entail in practice, and therefore strongly encourages these organizations to adopt a more responsive and participatory stance towards the Committee's work in sharing their valuable observations and insight with it.

### Structure of the survey

**36.** The General Survey is divided into nine chapters following as much as possible the order in which the various provisions are arranged in the Convention. In *Chapter I*, the Committee examines the material and personal scope of application of the Convention, and looks into the definition of the term "wages" and the categories of workers which may be excluded from its application. *Chapter II* of the survey discusses law and practice concerning the medium of payment, including payment in cash, forms of cashless pay and the conditions for the partial payment of wages in kind. In *Chapter III*, the Committee analyses the principle of the freedom of workers to dispose of their wages, as evidenced by the requirement for direct payment of wages, the prohibition of employers from limiting in any manner the freedom of workers to spend their earnings as they please and the right of workers to make use of works stores free of coercion. *Chapter IV* of the survey reviews national law and practice regarding the conditions and limits applicable to wage deductions, and also procedures relating to the attachment or assignment of wages, in light of the guiding principles set out in the Convention. The question of the protection of workers' wage claims in the event of bankruptcy is addressed in *Chapter V*, which also contains a succinct analysis of the provisions of [Convention No. 173](#), which partially revises [Convention No. 95](#) in this respect. In *Chapter VI*, the Committee considers the provisions of the Convention dealing with the periodicity, time and place of the payment of wages and makes some extended comments on the situation of wage arrears as currently experienced in different

<sup>25</sup> *Austria*: Federal Chamber of Labour (BAK); *Belarus*: Federation of Trade Unions of Belarus (FTUB); *Canada*: Canadian Employers Council (CEC), National Trade Unions Confederation (CSN); *Cape Verde*: Cape Verde Confederation of Free Trade Unions (CCSL); *Egypt*: Federation of Egyptian Trade Unions (FETU); *Mauritius*: Federation of Progressive Unions; *New Zealand*: Business New Zealand, New Zealand Council of Trade Unions (NZCTU); *Portugal*: Confederation of Portuguese Industry (CIP), General Union of Workers (UGT); *Sri Lanka*: Ceylon Workers' Congress (CWC); *Sweden*: Confederation of Swedish Enterprise, Swedish Agency for Government Employers, Swedish Association of Local Authorities, Swedish Confederation of Professional Associations (SACO), Swedish Federation of County Councils, Swedish Confederation of Trade Unions; *Turkey*: Turkish Confederation of Employers' Associations (TISK); *Ukraine*: Confederation of Employers of Ukraine, Federation of Trade Unions of Ukraine; *Viet Nam*: Viet Nam Chamber of Commerce and Industry (VCCI).

parts of the world. *Chapter VII* of the survey refers to the obligations arising out of the Convention in respect of the right of workers to receive adequate information about the wage conditions under which they are employed, as well as the calculation of their wages at the end of each pay period. *Chapter VIII* focuses on the problems of enforcement, with particular emphasis on the requirements of effective supervision and the imposition of appropriate penalties, to ensure compliance with the legislation concerning the protection of wages. Finally, in *Chapter IX*, the Committee makes an overall assessment of the difficulties of application encountered and the prospects for the ratification of the Convention, as reflected in the reports received, and concludes with some final observations on the continued relevance of the standards set out in the instruments under examination.

\* \* \*

*Throughout the survey, only those member States which have ratified the Convention are listed in italics. The references to member States appearing in the main text or the footnotes of this survey are based on a random selection and imply no discrimination between member States. The references are intended to serve as a practical illustration of the Committee's comments rather than to provide an exhaustive list of national legislation and practice. The numbers appearing in parentheses in the footnotes refer to selected pieces of legislation which are listed by country in [Appendix II](#). At the end of each chapter, summary conclusions recapitulate the main findings of the Committee in respect of the provision(s) of the Convention concerned.*

## CHAPTER I

### THE SCOPE OF APPLICATION OF THE CONVENTION

#### **1. Scope of application in relation to the concept of “wages”**

**37.** Article 1 of the Convention defines the term “wages” as meaning “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”. The preparatory work of the instruments under consideration confirms that the intention of the drafters was to use the term “wages” not in a technical sense, such as may exist within the framework of national legislation, but rather in a generic sense covering all the various forms and components of labour remuneration.<sup>1</sup>

**38.** In the large majority of countries, the national legislation contains a broad definition of the terms “wages”, “salary” or “remuneration” and thus ensures a sufficiently wide scope of application of the measures giving effect to

<sup>1</sup> As noted in the Office’s preliminary report prepared for the first Conference discussion, “in many countries the word ‘wages’ has a definite and circumscribed legal meaning; it may mean, for example, the remuneration of manual workers, or workers whose pay is calculated on a time basis of less than a month, or factory workers, as distinguished, respectively, from intellectual workers, employed persons whose remuneration is calculated by the month or year, or office and clerical employees. It would seem that, if the Conference should decide to adopt international regulations on the subject in the form of a Convention, this situation might give rise to grave difficulties of interpretation. In these circumstances the Office ventures to suggest a possible solution of this problem which would take the form of a decision that the proposed international regulations should apply to remuneration or earnings, however designated or calculated, capable of being expressed in terms of money, which are payable by an employer to a worker for labour or service rendered in virtue of a written or unwritten contract of employment”; see ILC, 31st Session, 1948, Report VI(c)(1), p. 6; and ILC, 31st Session, 1948, Report VI(c)(2), p. 68. During the Conference discussions, the definition originally proposed by the Office was amended only to include the words “in respect of work done or services rendered” so as to make it clear that the term “wages” means remuneration for work done or services rendered and that it excludes payments for any other reason; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 459.

the substantive provisions of the Convention. For instance, in *Azerbaijan*,<sup>2</sup> *Malta*<sup>3</sup> and the *Russian Federation*,<sup>4</sup> “wages” means any remuneration or earnings, including basic wages, wage supplements, bonuses, premiums and other payments. In *Côte d’Ivoire*,<sup>5</sup> *Gabon*<sup>6</sup> and *Niger*,<sup>7</sup> remuneration is understood to be the basic or minimum wage, as well as all other advantages, paid directly or indirectly, in cash or in kind, to an employed person on account of her or his employment. Similarly, in *Burkina Faso*,<sup>8</sup> *Lebanon*<sup>9</sup> and *Senegal*,<sup>10</sup> the term “wages” is taken to mean the basic remuneration, however designated, wage supplements, allowances for paid absence, and benefits, compensations and allowances of all kinds. In *Mexico*,<sup>11</sup> *Nicaragua*<sup>12</sup> and *Venezuela*,<sup>13</sup> “wages” means remuneration payable to the worker for his work and consists of cash remuneration at the daily rate, ex gratia payments, bonuses and wage supplements, commissions, benefits in kind such as food and housing and any other sum of money or benefit given to the worker on account of his work. In *Egypt*,<sup>14</sup> *Kuwait*<sup>15</sup> and the *Syrian Arab Republic*,<sup>16</sup> “wages” means any monies received by the worker for work done, supplemented by payments of any nature, including payments in kind, periodical increments, cost-of-living and family allowances, commissions, ex gratia payments, bonuses and tips.

**39.** In the United States,<sup>17</sup> several state laws define “wages” as any non-discretionary compensation due to an employee in return for labour or services

<sup>2</sup> (1), s. 154(1). This is also the case in the *Republic of Moldova* (2), s. 2(2), (4); *Romania* (2), s. 1(2); *Slovenia* (1), s. 126(2); *Uganda* (1), s. 66.

<sup>3</sup> (1), s. 2(1).

<sup>4</sup> (1), s. 129.

<sup>5</sup> (1), s. 31.1. This is also the case in *Benin* (1), s. 207; *Cape Verde* (1), s. 117; *Chad* (1), s. 246; *Guinea* (1), s. 206; *Guinea-Bissau* (1), s. 94; *Libyan Arab Jamahiriya* (1), s. 31; *Yemen* (1), s. 2.

<sup>6</sup> (1), s. 18.

<sup>7</sup> (1), s. 147.

<sup>8</sup> (1), s. 116.

<sup>9</sup> (1), s. 57.

<sup>10</sup> (1), s. L.118.

<sup>11</sup> (2), ss. 82, 84. This is also the case in *Bolivia* (1), s. 52; (2), s. 39; *Dominican Republic* (1), ss. 192, 195, 197; *Ecuador* (2), ss. 80, 95; (1), s. 35(14).

<sup>12</sup> (2), ss. 81, 84.

<sup>13</sup> (1), s. 133.

<sup>14</sup> (1), s. 1. Similar definitions are found in *Bahrain* (1), s. 66; *Saudi Arabia* (1), s. 7(6); *United Arab Emirates* (1), s. 1.

<sup>15</sup> (1), s. 28.

<sup>16</sup> (1), s. 3.

<sup>17</sup> See, for instance, *Arizona* (7), s. 23-350; *Iowa* (20), s. 91A.2(7); *Kentucky* (22), s. 337.010(1)(c); *New Hampshire* (36), s. 275:42(III); *New York* (39), ss. 190(1), 198-c; *North*

rendered by an employee for which the employee has a reasonable expectation to be paid whether determined by a time, task, piece, commission or other method of calculation. Wages include sick pay, vacation pay, severance pay, overtime pay, commissions, bonuses and other amounts promised as well as payments to the employee or to a fund for the benefit of the employee, such as payments for medical, health, hospital, welfare, pension when the employer has a policy or a practice of making such payments. In Canada,<sup>18</sup> “wages” is generally defined as every form of remuneration for work performed with the exception of tips and other gratuities. Despite the fact that the terms used may vary considerably, similar provisions have been enacted in most countries so that the protection afforded by national laws and regulations implementing the Convention covers such wage components as family benefits, production bonuses, commissions and increments, profit shares, non-pecuniary allowances, allowances paid in consideration of the worker’s seniority, overtime, or because of specific working conditions, such as shift work, dangerous or arduous work, annual awards and other extra compensatory payments.<sup>19</sup>

**40.** In a certain number of countries, however, the term “wages” is not construed sufficiently broadly to apply to any form of remuneration or earnings, with the result that specific benefits and supplements are not deemed to

Carolina (40), s. 95-25.2(16); Texas (51), s. 61.001(7); Wisconsin (58), s. 109.01(3). Under the laws of West Virginia (57), s. 21-5-1, “wages” means compensation for labour or services rendered by an employee and includes fringe benefits capable of calculation and payable directly to an employee such as regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits and benefits relating to medical and pension coverage. Similarly, in Georgia (15), s. 34-5-2, Massachusetts (27), s. 148, and Nebraska (34), s. 48-1202, “wages” is defined in a comprehensive manner as compensation for employment including payment in kind, commissions and bonuses, holiday pay as well as other employee benefits. In other states, the term “wages” is merely defined as compensation for labour or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis; see, for instance, California (9), s. 200; Colorado (10), s. 8-4-101(9); Connecticut (11), s. 31-71a; Delaware (13), s. 1101(a)(2); District of Columbia (14), s. 32-1301; Idaho (17), s. 45-601; Illinois (18), s. 115/2; Indiana (19), s. 22-2-9-1; Kansas (21), s. 44-313; Maryland (26), s. 3-401(e); Missouri (32), s. 290.500(7); New Mexico (38), s. 50-4-1(B); North Dakota (42), s. 34-06-01(6); Rhode Island (47), s. 28-14-1; Utah (52), s. 34-28-2.

<sup>18</sup> (1), s. 166. In most provinces, “wages” includes commissions, money paid as an incentive and productivity bonuses, vacation allowance and other employee benefits; see British Columbia (6), s. 1(1); Manitoba (7), s. 1(1); Newfoundland and Labrador (9), s. 2; Northwest Territories (10), s. 1; Ontario (14), s. 1(1); Quebec (16), s. 1; Saskatchewan (17), s. 2. However, in some cases, “wages” does not include overtime pay, vacation pay and termination pay; see Alberta (4), s. 1(1); New Brunswick (8), s. 1; Nova Scotia (12), s. 2; Prince Edward Island (15), s. 1.

<sup>19</sup> This is the situation, for instance, in *Algeria* (1), ss. 80, 81, 82; *Belarus* (1), s. 57; *Belgium* (1), s. 2; *Guyana* (1), s. 2; *Iraq* (1), ss. 41, 43, 44; *Islamic Republic of Iran* (1), ss. 2, 34, 45; *Israel* (1), s. 1; *Kyrgyzstan* (1), s. 213(1); *Ukraine* (2), ss. 1, 2.

constitute wages. For example, in *Argentina*,<sup>20</sup> *Colombia*<sup>21</sup> and *Honduras*,<sup>22</sup> social security benefits are not deemed to be wages. In the *Czech Republic*<sup>23</sup> and *Slovakia*,<sup>24</sup> payments in respect of “wage compensation”, “cash compensation”, travel expenses, income from capital shares or bonds, remuneration for stand-by or emergency work are excluded from the scope of the terms “wages” or “salary”. Similarly, in *Brazil*<sup>25</sup> and the *Democratic Republic of the Congo*,<sup>26</sup> health care, statutory family allowance and travelling expenses are not regarded as elements of remuneration. In the *Bahamas*,<sup>27</sup> wages include every form of remuneration for work performed, except tips, bonuses and other gratuities, while in *Congo*,<sup>28</sup> wages include basic remuneration, premiums, allowances and indemnities of any nature, except for compensation in the case of dismissal. In *Malaysia*,<sup>29</sup> “wages” means basic wages and all other payments in cash payable to an employee for work done with the exception of: (i) the value of any house accommodation or the supply of food, fuel, light or water or medical assistance; (ii) any contribution paid by the employer on his own account to any pension fund, provident fund, retirement scheme or any other fund or scheme established for the welfare of the employee; (iii) any travelling allowance; (iv) any gratuity;

<sup>20</sup> (1), ss. 103, 103bis, 105.

<sup>21</sup> (1), ss. 127, 128.

<sup>22</sup> (2), ss. 360 to 362.

<sup>23</sup> (2), s. 4(2); (4), s. 3(2).

<sup>24</sup> (1), s. 118(2).

<sup>25</sup> (2), ss. 457, 458. See also Chile (1), s. 41, and El Salvador (2), s. 119.

<sup>26</sup> (1), s. 4(h).

<sup>27</sup> (4), s. 2(1).

<sup>28</sup> (2), s. 91.

<sup>29</sup> (1), s. 2. Similarly, in *Botswana* (1), s. 2(1), and *Myanmar* (1), s. 2, the term “wages” means the aggregate of basic pay and all other forms of remuneration, including overtime payments and other special remuneration, such as a production bonus or cost-of-living allowance, with the exception of: (i) the value of any house, accommodation, supply of light, water, medical attention or other amenity provided free; (ii) any ex gratia payment or gift or the value of a travelling allowance; (iii) any contribution paid by the employer on his own account to any pension fund; (iv) any severance benefits. In the United States, at the state level, the legislation occasionally excludes certain payments from the notion of wages. For instance, in Alabama (4), s. 25-4-16, and Oklahoma (44), s. 40-1-218, “wages” is defined as every form of remuneration paid or received for personal services, including the cash value of any remuneration paid in any medium other than cash, with the exception of retirement benefits, payments on account of sickness or accident disability, as well as dismissal or severance payments. Moreover, in Michigan (28), s. 408.471, fringe benefits, such as compensation due to an employee for holiday, time off for sickness or injury, time off for personal reasons or vacation, bonuses, authorized expenses incurred during the course of employment, and contributions made on behalf of an employee, are specifically excluded from the notion of wages, while the legislation of Minnesota (30), s. 5200.0140 excludes payments for overtime work, bonuses, vacation or sick pay, profit-sharing, contributions to a savings or retirement plan, as well as life or health insurance or similar benefits.

(v) any annual bonus; (vi) any sum paid for special expenses incurred because of the nature of the employment.

41. In *Mauritius*,<sup>30</sup> remuneration comprises all emoluments earned by a worker except for money due as a share of profits, while in *Namibia*,<sup>31</sup> the law excludes from the legal definition of remuneration any payment for travel and subsistence expenses or any payment made by virtue of the employee's retirement or termination of employment. In *Seychelles*,<sup>32</sup> only payments for overtime work or other incidental purposes are not deemed to fall within the definition of wages, whereas in *Sudan*,<sup>33</sup> the term "wage" means the total of the basic wage and all other benefits including the value in cash of food, fuel or housing, or any other payment for overtime work or any other special benefit paid for the performance of a job, but does not include any contribution paid by the employer on behalf of the worker to any social security institution or special expenditures to be borne by the employer. In *Tunisia*,<sup>34</sup> the law defines remuneration as including the basic wage irrespective of how it is calculated, as well as any wage supplements, whether in cash or in kind, general or specific, standard or fluctuating, except for the reimbursement of expenses.

42. Mention may also be made of cases where the legislation relating to the protection of wages refers only to written contracts, which raises the question as to how wages are protected in cases of employment by virtue of unwritten contracts. In one of the Committee's most recent comments on this point, the Government of *Azerbaijan*<sup>35</sup> was invited to indicate the measures ensuring wage protection in the case of employment at individual peasant or family enterprises in the agricultural sector, where employment contracts may exceptionally be concluded verbally.

43. It should be further noted that in some countries, such as *Azerbaijan*, *Belarus* and *Egypt*, the legal definition of wages is limited to payment for work actually performed and does not extend to payment which may have been agreed but has not yet become due in respect of work that remains to be done.

44. In some countries, the national legislation reproduces to the letter the definition of the term "wages" as set out in Article 1 of the Convention. This is

<sup>30</sup> (1), s. 2.

<sup>31</sup> (1), s. 1. Similarly, in *Spain* (1), s. 26(1), (2), any amounts received by workers in reimbursement of expenses incurred as a result of their employment and by way of compensation for transfer, suspension or dismissal are not deemed to be wages.

<sup>32</sup> (1), s. 2.

<sup>33</sup> (1), s. 4. Similarly, in *Qatar* (1), s. 2(6), transport or travel allowances, as well as any contributions payable by the employer to any scheme set up for the benefit of the workers, are excluded from the scope of wages.

<sup>34</sup> (1), s. 134-2.

<sup>35</sup> (1), s. 258(3).

the case, for example, in *Cameroon*,<sup>36</sup> *Nigeria*<sup>37</sup> and *Paraguay*.<sup>38</sup> In the case of the *Philippines*,<sup>39</sup> the definition of wages follows very closely that of the Convention, but also includes the fair and reasonable value, as determined by the Secretary of Labor, of board and lodging or other facilities customarily furnished by the employer to the employee.

45. In certain countries, such as *Bulgaria*, *Central African Republic*, *Comoros*, *Cuba*, *Cyprus*, *Djibouti*, *Kyrgyzstan*, *Madagascar*, *Mauritania*, *Poland* and *Tajikistan*,<sup>40</sup> there appears to be no general definition of the term “wages”, but only elements of such a definition implicit in the various provisions relating to labour remuneration. This is also the case in *Hungary*, although the Government has confirmed that all the types of remuneration mentioned in the relevant parts of the Labour Code, such as wage supplements, benefits in kind, bonuses, incentives, profit shares and dividends, should be understood as part of wages and therefore covered by the provisions relating to protection of wages. The Government of *Mali* has reported that a definition of the term “wages” will be inserted into the Labour Code on the first suitable occasion to reflect the relevant provision of the Convention.

46. In other cases, the national legislation contains more than one definition of “wages” or “remuneration” which are not entirely consistent with one another and do not fully correspond to the definition contained in this Article. This is the case, for instance, in *Sri Lanka*,<sup>41</sup> where the main law in the field of wage protection merely stipulates that wages include any remuneration due in respect of overtime work or any holiday, while another enactment of more limited application provides that remuneration means salary or wages and includes any special cost-of-living allowance, any allowance for overtime work and such other allowance as has been prescribed. Similarly, in *Panama*,<sup>42</sup> the Labour Code contains a general definition of the term “wages”, which comprises any payment in cash or in kind as well as ex gratia payments, bonuses, wage supplements, emoluments, commissions, profit-sharing and in general any sum or benefits received by workers on account of their work, but also stipulates that various allowances, such as productivity premiums, bonuses, ex gratia payments,

<sup>36</sup> (1), s. 61. See also *Barbados* (2), s. 2; *Swaziland* (1), s. 2; *Zambia* (1), s. 3.

<sup>37</sup> (1), s. 91.

<sup>38</sup> (1), ss. 227, 231.

<sup>39</sup> (1), s. 97(f).

<sup>40</sup> However, the Civil Service Act provides that the wage of state officials is composed of the basic salary, pay supplements (e.g. allowances for length of service or scientific qualifications) and other bonuses based on performance; (3), s. 27.

<sup>41</sup> (1), s. 68; (2), s. 64. The Committee has been commenting for many years on this point, emphasizing the need for an overall definition which entirely meets the requirements of this Article of the Convention.

<sup>42</sup> (1), ss. 140, 142.



the 13th month wage supplement, donations and profit-sharing are not considered as wages.

### 1.1. Meaning of protected “wages”

The Committee notes that the allegations submitted by the signatory trade union organizations and the reply of the Government reveal a legislative and regulatory mechanism which deforms the concept of wages by means of the adoption of benefits and various allowances (transport, food) paid by the employer, which do not affect the amount of wages, under the meaning of section 133 of the Organic Labour Law. [...] The Committee notes that the trade union organizations consider that the policy of “desalarization” constitutes a violation of Article 1 of [Convention No. 95](#), as the laws and regulations creating or increasing benefits and allowances state that they are of a non-wage character and that, consequently, they are not taken into account for calculating benefits which, either under law or under collective agreement, are due to the worker. A number of texts stipulate that these benefits are not considered an integral part of the base wage for calculating benefits, allowances and compensation which, by law or by collective agreement, may be granted to the worker during the performance of services or on the termination of employment relationship. The Committee might note that Article 1 of [Convention No. 95](#) gives a definition of the term “wages” “in this Convention”. This definition might be wider than that contained in national legislation, without this necessarily implying a violation of the Convention – provided that the remuneration or earnings due, payable under a contract of employment by an employer to a worker, whatever term is used, are covered by the provisions of Articles 3 to 15 of the Convention. This is the meaning of the observation of the Committee of Experts on the Application of Conventions and Recommendations, to which the trade union organizations concerned refer: the fact that the benefit, however it is termed, does not enter into the definition of wages contained in the national legislation does not *ipso facto* constitute a violation of the Convention. [...] However, by expressly mentioning that benefits and allowances are of a non-wage nature and that consequently, they are not considered for purposes of calculating benefits which, by law or by collective agreements, may be granted to the worker during the performance of services, the abovementioned laws and regulations have the effect, amongst others, of excluding them from the guarantees provided for under the Organic Labour Law in application of the relevant provisions of the Convention. Consequently, the Committee requests the Government to indicate the measures taken to ensure that these allowances, which are of a non-wage nature under the national legislation, are, in application of [Convention No. 95](#), covered by the protection established in the Organic Labour Law, by repealing the legal provisions or regulations incompatible with section 133 of the Organic Labour Law. [...] The Committee points out that the amassing of decisions which state that the benefits granted under the abovementioned laws and regulations are not of a wage nature, reduces the amount of the sums protected under the terms of “wages” to such an extent that the very concept of “wages” loses any meaning.

Source: Report of the Committee set up to examine the representation made under article 24 of the Constitution alleging non-observance by Venezuela of [Convention No. 95](#), March 1997, GB.268/14/9, paras. 17-23, pp. 5-8.

47. In a few instances, the Committee has been confronted with situations where the concept of “wages” has been progressively emptied of its meaning by means of legal enactments stipulating that specific benefits and allowances are of a non-wage character, thus considerably reducing the amount of the sums effectively protected under the national legislation. On one occasion, this “desalarization” policy gave rise to a representation made under article 24 of the ILO Constitution, with the main allegation of the signatory trade union organizations being that a legislative and regulatory mechanism which deforms the concept of wages by means of the adoption of benefits and various allowances not deemed to be wages within the meaning of the law, constitutes a violation of Article 1 of the Convention. In adopting the conclusions of the tripartite committee set up to examine this representation, the Governing Body expressed the view that the fact that a wage benefit, however it is termed, does not enter into the definition of wages contained in the national legislation does not, *ipso facto*, constitute a violation of the Convention provided that the remuneration or earnings due, payable under a contract of employment by an employer to a worker, whatever term is used, are covered by the provisions of Articles 3 to 15 of the Convention. It therefore requested the Government concerned to indicate the measures taken to ensure that the allowances, which are of a non-wage nature under the national legislation, are, in application of the Convention, covered by the protection afforded by national laws and regulations concerning wages.<sup>43</sup>

## **2. Scope of application to persons: Exclusion of certain categories of workers**

48. Article 2, paragraph 1, of the Convention states that the Convention “applies to all persons to whom wages are paid or payable”. The Convention, however, allows ratifying States to exclude certain categories of workers from the scope of application. Article 2, paragraph 2, of the Convention provides that the “competent authority may, after consultation with the organisations of employers and employed persons directly concerned, if such exist, exclude from the application of all or any of the provisions of the Convention categories of persons whose circumstances and conditions of employment are such that the application to them of all or any of the said provisions would be inappropriate and who are not employed in manual labour or are employed in domestic service or work similar thereto”.<sup>44</sup>

<sup>43</sup> See report of the Committee set up to examine the representation alleging non-observance by Venezuela of [Convention No. 95](#) made under article 24 of the ILO Constitution by several workers’ organizations, GB.268/14/9, paras. 21-22, pp. 7-8.

<sup>44</sup> The possibility of excluding certain categories of employees from the coverage of the Convention was first referred to in the Office report which served as the basis for the first Conference discussion. As noted in this report, “it would seem advisable to consider the possibility

49. According to Article 2, paragraph 3, of the Convention, member States must indicate in their first report submitted under article 22 of the Constitution any categories of persons which they propose to exclude from the application of the Convention, although after the date of the first annual report no further exceptions are permissible save in respect of those categories of persons already indicated.<sup>45</sup> On a number of occasions, the Committee has drawn attention to this provision and has recalled that ratifying States may only avail themselves of the exemption possibility at the time of the first annual report, or at any time thereafter in so far as they have communicated at the time of the first annual report their intention possibly to exclude at a later date specific categories of persons.<sup>46</sup>

of following the legislation of a number of countries by excluding from the application of the proposed international regulations employed persons who have a status and standard of remuneration which makes it unnecessary to give them the same measure of protection as lower paid workers"; see ILC, 31st Session, 1948, Report VI(c)(1), p. 6. By way of example, the preliminary Office questionnaire referred to the possibility of excluding employed persons whose remuneration exceeds an amount prescribed by law. The replies of the governments on this question were particularly divided, leading the Office to conclude that "it would seem more desirable to deal with the question in terms of a general exclusion formula to which the governments could have recourse in the light of national circumstances"; see ILC, 31st Session, 1948, Report VI(c)(2), p. 69. At both Conference discussions, the Worker members unsuccessfully proposed the outright deletion of the provision containing the exclusion, arguing that no exceptions should be admitted to the principle of giving full protection to the wages of all workers; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 459, and ILC, 32nd Session, 1949, *Record of Proceedings*, p. 500. Another amendment submitted by the Worker members which gave rise to some discussion but failed to be adopted concerned the deletion of the reference to domestic service. It was argued, in this connection, that if the Convention were to apply in general to manual workers, there should be no latitude to exempt persons in domestic service, who in fact needed the protection of the Convention even more than industrial workers. Those opposing the amendment expressed the view that a number of provisions of the proposed Convention had been drafted with particular reference to industrial workers and that difficulties would arise in the full application of these provisions in respect of domestic workers; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 501.

<sup>45</sup> For instance, in its first detailed report submitted in 1962, the Government of *Israel* announced that it reserved the right to exclude, should the necessity arise, employees whose wages include shares in profits or depend upon turnover, or whose wages exceed those of the highest paid civil servant. To date, these two categories of persons have not been excluded, even though the possibility still remains open.

<sup>46</sup> By way of example, in response to the recent announcement of the Government of *Bahamas* to the effect that under the Employment Protection Bill, 2000, it intends to exclude from the application of the Convention domestic employees, manual labourers and employees in small resorts with less than 15 rooms, and that under the Minimum Wage Bill it is considering introducing additional exclusions concerning gas station attendants and employees at small resorts in the Family Islands and in New Providence, the Committee has pointed out that such measures would be inconsistent with the requirements of the Convention since the Government in all its previous reports had consistently stated that no categories of workers were excluded. The Committee has recently addressed a similar comment to the Government of *Azerbaijan*, drawing

**50.** It is also worth mentioning that in some countries, such as *Barbados*<sup>47</sup> and *Swaziland*,<sup>48</sup> the exemption possibility set forth in Article 2, paragraph 2, of the Convention has been incorporated literally into national legislation, even though it may no longer be possible to take advantage of such a possibility in practice on account of the procedural limitations laid down in Article 2, paragraph 3, of the Convention. The same observation applies to *Botswana*,<sup>49</sup> where the legislation provides that the Minister may, after consultation with the employers' and workers' organizations concerned, by order, exclude from the application of the provisions relating to the protection of wages the wages paid to categories of employees whose circumstances and conditions of employment are such that the application of those provisions would in the opinion of the Minister be inappropriate.

**51.** In many countries, the provisions of national legislation dealing with the protection of wages apply to all workers without exception. This is the case, for instance, in *Iraq*,<sup>50</sup> *Slovenia*,<sup>51</sup> *Tajikistan*<sup>52</sup> and *Tunisia*.<sup>53</sup> Similarly, in the *Republic of Moldova*,<sup>54</sup> the Wages Act applies to all persons employed under contract in enterprises, organizations, and institutions regardless of the form of ownership.

**52.** In other countries, however, there is considerable variety in the workers who are excluded from the scope of application of the general labour legislation and who are therefore left unprotected in respect of the payment of their wages. In many countries, such as *Congo*,<sup>55</sup> *Gabon*<sup>56</sup> and *Senegal*,<sup>57</sup> persons appointed to permanent posts in establishments or services of public administration are excluded from the scope of application of the Labour Code. Civil servants also fall outside the purview of the Labour Code in

attention to the fact that, while in its first report it made no use of the permissive provision of Article 2, paragraph 3, of the Convention, the new Labour Code adopted in 1999 excluded from its scope of application persons performing jobs under contractor, task, commission, author and other civil contracts.

<sup>47</sup> (2), s. 7.

<sup>48</sup> (1), s. 63.

<sup>49</sup> (1), s. 74.

<sup>50</sup> (1), s. 8.

<sup>51</sup> (1), ss. 2, 3.

<sup>52</sup> (1), s. 6; (3), s. 4.

<sup>53</sup> (1), s. 1.

<sup>54</sup> (2), s. 1(1).

<sup>55</sup> (2), s. 2. This is also the case in *Benin* (1), s. 2; *Burkina Faso* (1), s. 1; *Cape Verde* (1), s. 3(2); *Chile* (1), s. 1; *Comoros* (1), s. 1; *Côte d'Ivoire* (1), s. 2; (4), s. 61; *Guinea-Bissau* (1), s. 1(3); *Madagascar* (1), s. 1; *Mauritania* (1), s. 1; *Niger* (1), s. 2; *Togo* (1), s. 2.

<sup>56</sup> (1), s. 1.

<sup>57</sup> (1), s. L.2.

*Brazil*,<sup>58</sup> *Guinea*,<sup>59</sup> *Hungary*<sup>60</sup> and *Islamic Republic of Iran*.<sup>61</sup> It is presumed, however, that such categories of persons do not include manual workers and that they enjoy adequate protection of their wages under specific legislation.

**53.** Also, in *Algeria*,<sup>62</sup> *Cameroon*<sup>63</sup> and *Uganda*,<sup>64</sup> the provisions of the Labour Code do not apply to members of the judiciary, established state officials or members of the police and armed forces, who are governed by special rules and regulations. In *Bahrain*<sup>65</sup> and *Egypt*,<sup>66</sup> state officials and other workers employed by public organizations and companies in the public sector, as well as members of the police, security and defence forces, are excluded from the application of the Labour Code and their employment conditions are regulated by specific laws. This is also the case in *Swaziland*<sup>67</sup> and *Zambia*,<sup>68</sup> where the Employment Act, including its provisions concerning the protection of wages, does not apply to members of the defence forces, police forces and prison service.

**54.** In some countries, domestic workers are excluded from the coverage of the laws and regulations giving effect to the provisions of the Convention.

<sup>58</sup> (2), s. 7(c), (d), (e). This is also the case in *Argentina* (1), s. 2(a); *Dominican Republic* (1), Principle III; *Honduras* (2), s. 2(2); *Panama* (1), s. 2; *Spain* (1), s. 3(a).

<sup>59</sup> (1), s. 1.

<sup>60</sup> (1), s. 2(1).

<sup>61</sup> (1), s. 188.

<sup>62</sup> (1), s. 3. This is also the case in *Central African Republic* (1), s. 3; *Chad* (1), s. 2; *Democratic Republic of the Congo* (1), s. 1; *Mali* (1), s. L.1; *Sudan* (1), s. 3(a), (c), (e); *Yemen* (1), s. 3(2).

<sup>63</sup> (1), s. 1(3).

<sup>64</sup> (1), s. 5(2), (3).

<sup>65</sup> (1), s. 2(1). This is also the case in *Kuwait* (1), s. 2(a), (b); *Qatar* (1), s. 6(1), (2); *United Arab Emirates* (1), s. 3(a), (b). Similarly, in *Viet Nam* (1), ss. 2, 4; (4), s. 2, the legal regulations on wages apply to all workers and organizations or individuals utilizing labour on the basis of a labour contract in any sector of the economy and in any form of ownership, including trade apprentices, domestic servants or any other forms of labour, with the exception of civil servants, public employees and officers and members of the armed forces. See also *Bolivia* (2), s. 1, and *Dominican Republic* (1), s. III.

<sup>66</sup> (1), s. 3(a); (2), ss. 40 to 47; (3), ss. 37 to 45. The Government plans to adopt a unified Labour Code.

<sup>67</sup> (1), s. 5. This is also the case in *Nicaragua* (2), s. 3, and *Paraguay* (1), s. 2. Similarly, in *Azerbaijan* (1), s. 6, the provisions of the Labour Code do not apply to military personnel, judges, Members of Parliament and persons elected to municipal bodies.

<sup>68</sup> (1), s. 2(1). See also *Namibia* (1), s. 2(2)(a).

This is the case, for example, in *Argentina*,<sup>69</sup> *Egypt*,<sup>70</sup> *Philippines*<sup>71</sup> and *Venezuela*.<sup>72</sup> This is also the position in *Kuwait*<sup>73</sup> and *Qatar*,<sup>74</sup> where persons employed in domestic service, such as nurses, drivers, cooks or gardeners, are excluded from the scope of application of the Labour Code. This also appears to be the case in *Swaziland*,<sup>75</sup> although domestic employees would seem to fall within the scope of the term “employee” and should thus normally be covered by the provisions on the protection of wages.

**55.** In certain countries, such as the *Libyan Arab Jamahiriya*<sup>76</sup> and *Spain*,<sup>77</sup> persons employed in family enterprises are not subject to the provisions of the Labour Code. This is also the position in *Bahrain*<sup>78</sup> and *Saudi Arabia*,<sup>79</sup> where members of the employer’s family and his relatives by blood or marriage who reside in his home, and who are effectively and entirely supported by him, are also outside the scope of application of the Labour Code.

**56.** Furthermore, small businesses are sometimes excluded from the coverage of the general labour legislation. For example, in *Kuwait*<sup>80</sup> and the *United Arab Emirates*,<sup>81</sup> employees working in small enterprises normally employing a maximum of five employees are excluded from the coverage of the Labour Code. The situation is similar in *Qatar*<sup>82</sup> with respect to small firms

<sup>69</sup> (1), s. 2(b). This is also the case in *Brazil* (2), s. 7(a); *Cape Verde* (1), s. 4; *Guinea-Bissau* (1), s. 1(2); *Libyan Arab Jamahiriya* (1), s. 1(b); *Lebanon* (1), s. 7(1); *Sudan* (1), s. 3(f); *Syrian Arab Republic* (1), s. 5; *Yemen* (1), s. 3(2)(i). In addition, the Government of *Paraguay* has excluded in its first annual report domestic workers from the application of the Convention.

<sup>70</sup> (1), s. 3(b).

<sup>71</sup> (1), s. 98.

<sup>72</sup> (1), s. 275. On several occasions, the Committee has drawn the Government’s attention to the fact that the exclusion of domestic workers was not indicated in its first annual report as required under the terms of the Convention.

<sup>73</sup> (1), s. 2(e). See also *Saudi Arabia* (1), s. 3(c) and the *United Arab Emirates* (1), s. 3(d). In *Bahrain* (1), s. 2(2), according to the Government’s report, domestic servants and other categories of workers excluded from the scope of the Labour Code enjoy protection with respect to labour remuneration under the provisions of the Civil Law, promulgated in 2001, and the law on civil and commercial proceedings, of 1971.

<sup>74</sup> (1), s. 6(5).

<sup>75</sup> (1), ss. 2, 61(1), 63.

<sup>76</sup> (1), s. 1(a). This is also the case in *Islamic Republic of Iran* (1), s. 188, and *Sudan* (1), s. 3(h).

<sup>77</sup> (1), s. 3(e).

<sup>78</sup> (1), s. 2(6). See also *Qatar* (1), s. 6(4), and *United Arab Emirates* (1), s. 3(c).

<sup>79</sup> (1), s. 3(a).

<sup>80</sup> (1), s. 2(f). This is also the case in *Costa Rica* (1), s. 14(c) in respect of agricultural undertakings permanently employing less than five workers.

<sup>81</sup> (1), s. 3(f).

<sup>82</sup> (1), s. 6(6).

employing fewer than six workers, while in the case of the *Islamic Republic of Iran*,<sup>83</sup> enterprises with fewer than ten workers may, as circumstances require, be temporarily excluded from some of the provisions of the Labour Code by decision of the Government.

57. In other countries, such as *Dominica*,<sup>84</sup> the legislation concerning the protection of wages applies only to workers performing manual work, while workers engaged in clerical work are explicitly excluded from its scope of application. Similarly, in *Malaysia*,<sup>85</sup> only manual workers, including domestic servants, transport workers and seafarers, are covered by the legislation giving effect to the Convention. In *Norway*,<sup>86</sup> workers employed in the shipping, hunting and fishing industries are excluded from the scope of the main law on wage protection, and the King is given wide discretion to decide whether or not and to what extent the law shall apply to other branches of activity, such as civil aviation, public administration and agriculture, or other categories of workers such as homeworkers and domestic workers. In *Bahrain*<sup>87</sup> and *Kuwait*,<sup>88</sup> the Labour Code is not applicable to merchant shipping officers, engineers and seafarers, whose employment contracts are subject to special laws.

58. In some cases, casual workers are excluded from the coverage of wage protection legislation. This is the case, for instance, in *Sudan*<sup>89</sup> and *Yemen*.<sup>90</sup> Similar regulations are found in *Qatar*<sup>91</sup> and the United Arab Emirates,<sup>92</sup> where temporary or casual workers are understood to mean workers employed in seasonal work for a duration of from three months to one year.

59. Another category of workers often excluded from the application of protective legislation in respect of the payment of wages is homeworkers. In *Nigeria*,<sup>93</sup> for instance, homeworkers are excluded from the definition of “workers”. In this connection, the Committee has been pointing out for many years that homeworkers are considered manual workers under the Convention and as such should enjoy its full protection.

<sup>83</sup> (1), s. 191.

<sup>84</sup> (1), s. 2.

<sup>85</sup> (1), s. 2 and First Schedule, s. 2.

<sup>86</sup> (1), ss. 2, 3, 5, 6.

<sup>87</sup> (1), s. 2(4).

<sup>88</sup> (1), s. 2(g).

<sup>89</sup> (1), s. 3(i).

<sup>90</sup> (1), s. 3(2)(g).

<sup>91</sup> (1), s. 6(3). Casual workers employed for a period of under four weeks are excluded. See also *Bahrain* (1), s. 2(3) and *Kuwait* (1), s. 2(d).

<sup>92</sup> (1), s. 3(g).

<sup>93</sup> (1), s. 91.

**60.** Some countries exclude high-salaried non-manual workers. This is the case, for instance, in *Malaysia*,<sup>94</sup> where the legislation dealing with the protection of wages is applicable to all employees receiving wages not exceeding 1,500 ringgit a month. Similarly, in *Spain*,<sup>95</sup> corporate executives are excluded from the application of the national legislation concerning wages.

**61.** In *Lebanon*<sup>96</sup> and *Libyan Arab Jamahiriya*,<sup>97</sup> the Labour Code excludes from its scope agricultural undertakings not of an industrial or commercial character. In this regard, the Committee has for a number of years been drawing attention to the fact that all agricultural workers without exception fall within the scope of the Convention as long as wages are paid or payable to them and that measures should be taken with a view to extending protection to these workers or applying the protection afforded by the Convention to these workers in some other manner. Similarly, in Saudi Arabia<sup>98</sup> and *Sudan*,<sup>99</sup> persons employed in agriculture and pastoral work are excluded from the scope of the Labour Code, except for persons employed in agricultural establishments or enterprises which process or market their own products, or persons operating or repairing mechanical equipment required for agriculture. Agricultural workers are also excluded from the scope of general labour legislation in *Argentina*<sup>100</sup> and *Bolivia*,<sup>101</sup> while in the *Islamic Republic of Iran*,<sup>102</sup> the law provides for the possibility of exempting agricultural occupations from the scope of the Labour Code, as may be required.

**62.** Occasionally, the coverage of the national legislation does not extend to apprentices, even though under the terms of the Convention such workers may not be excluded from its protection. This is the situation, for instance, in *Zambia*.<sup>103</sup>

**63.** Finally, in some cases, although no exemptions are currently in force, the national legislation confers wide discretionary power upon government

<sup>94</sup> (1), s. 2 and First Schedule, s. 1. See also Myanmar (1), s. 1(6).

<sup>95</sup> (1), s. 3(c).

<sup>96</sup> (1), s. 7(2).

<sup>97</sup> (1), s. 1(c)(i).

<sup>98</sup> (1), s. 3(b). This is also the case in Bahrain (1), s. 2(5); United Arab Emirates (1), s. 3(e); *Yemen* (1), s. 3(2)(j).

<sup>99</sup> (1), s. 3(g).

<sup>100</sup> (1), s. 2(c).

<sup>101</sup> (2), s. 1. The Committee has been requesting for many years the Government to indicate whether similar provisions to those adopted in respect of agricultural workers in cotton and sugar-cane, are to be enacted in order to extend the provisions of the General Labour Act to all agricultural workers.

<sup>102</sup> (1), s. 189.

<sup>103</sup> (1), s. 3.



authorities in this respect. The Government of Seychelles,<sup>104</sup> for instance, has reported that no categories or persons are excluded from the scope of application of any national laws regarding wage protection, although the Minister of Labour may, under the Employment Act, exempt any contract of employment, category of persons, or business or occupation from the operation of all or any of its provisions subject to such conditions as she or he thinks fit.

\* \* \*

**64.** To recapitulate, the Convention requires that all persons to whom wages are paid or payable enjoy protection in respect of the payment of their wages and that such protection be wide enough in scope to cover all forms and types of remuneration that the workers may receive on account of their employment. Even though Article 2 of the Convention clearly aims at the protection of all workers without exception, it affords some latitude in allowing the exclusion of certain categories of non-manual workers subject to specific conditions. In this respect, the Committee notes with concern that in certain cases large numbers of workers, such as agricultural workers, casual workers and homeworkers, are left unprotected, which is hardly consistent with the limited and provisional nature of the exemptions permitted by Article 2, paragraph 2, of the Convention. With regard to its material scope of application, the Committee considers it essential to recall that Article 1 of the Convention is not intended to establish a binding “model” definition of the term “wages”, but to ensure that the real earnings of workers, however termed or reckoned, are fully protected under national laws in respect of the matters dealt with in Articles 3 to 15 of the Convention. As recent experience has shown, especially with regard to the “desalarization” policies practised in certain countries, the obligations deriving from the Convention with respect to the protection of workers’ wages cannot be bypassed by mere terminological subterfuges, but require the extended and *bona fide* coverage by national legislation of labour remuneration whatever form it takes.

<sup>104</sup> (1), s. 4(2).

## CHAPTER II

### MEDIUM OF WAGE PAYMENT

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

#### **1. Payment of wages in legal tender**

##### **1.1. Payment in money**

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

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

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

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

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

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

<sup>3</sup> (1), s. 99.

<sup>4</sup> (1), s. L.114.

<sup>5</sup> (1), s. 95.

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

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

<sup>8</sup> (1), s. 134.

<sup>9</sup> (1), s. 123A(x); (2), s. 101.

<sup>10</sup> (1), s. 151.

<sup>11</sup> (2), s. 2; (3), s. 3.

<sup>12</sup> (1), s. 72.

<sup>13</sup> (1), s. 19(1)(a); (2), s. 2(a).

<sup>14</sup> (1), s. 61.

<sup>15</sup> (1), s. 85.

<sup>16</sup> (1), s. 7.

<sup>17</sup> (1), s. 47.

<sup>18</sup> (1), s. 79.

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

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

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

<sup>20</sup> (1), s. 10(1).

<sup>21</sup> (1), s. 139.

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

<sup>23</sup> (2), s. 463.

<sup>24</sup> (1), s. 154(1).

<sup>25</sup> (1), s. 131.

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

<sup>27</sup> (1), ss. 2, 18(1).

<sup>28</sup> (1), s. 42(2).

<sup>29</sup> (1), s. 32.

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

**71.** In Australia, according to the information provided by the Government, there are no legislative or regulatory provisions at the federal level requiring wages to be paid in legal tender. At the state level, however, there is a range of legislation establishing that wages must be paid in cash, unless the employee or the legislation itself authorizes some other form of payment. This is the case in New South Wales,<sup>40</sup> South Australia<sup>41</sup> and Western Australia.<sup>42</sup> In Queensland,<sup>43</sup> wages are to be paid in Australian currency unless the employee consents in writing to a cashless method of wage payment. In Tasmania,<sup>44</sup> the Industrial Relations Act states that if an employee is entitled to be paid any sum by his employer, that employer is guilty of an offence if that sum is paid otherwise than in money, while most Tasmanian industrial awards contain

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

<sup>31</sup> (1), s. 195.

<sup>32</sup> (1), s. 33.

<sup>33</sup> (2), s. 23.

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

<sup>35</sup> (1), s. 2(a).

<sup>36</sup> (1), s. 86(2).

<sup>37</sup> (1), s. 59(2).

<sup>38</sup> (1), s. 213.

<sup>39</sup> (1), s. 6; (2), s. 11(1).

<sup>40</sup> (5), s. 117(2)(a).

<sup>41</sup> (8), s. 68(2)(a).

<sup>42</sup> (10), s. 17C(1)(a).

<sup>43</sup> (7), s. 393(2)(a).

<sup>44</sup> (9), s. 51(3).

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

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

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

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

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

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

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

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

75. In contrast, in *Suriname*,<sup>52</sup> money wages fixed in the currency of a foreign country are to be converted at the rate of exchange on the day and at the place of payment or, if there are no exchange facilities at the place in question, at the rate of exchange in the nearest place of business where exchange facilities are available. In almost identical terms, the law in Indonesia<sup>53</sup> provides that if a wage is specified in a foreign currency the payment has to be made according to its exchange rate on the day and at the place of payment. The legislation in Seychelles<sup>54</sup> recognizes implicitly the payment of wages in a foreign currency by providing that labour wages are payable in the currency of the country where payment is made.

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

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

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

<sup>48</sup> (1), s. 29(1).

<sup>49</sup> (1), ss. 54, 77.

<sup>50</sup> (1), s. 29(1).

<sup>51</sup> (1), s. 135.

<sup>52</sup> (1), s. 1614H.

<sup>53</sup> (2), s. 13(2).

<sup>54</sup> (1), s. 32(1).

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

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

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

<sup>56</sup> (1), s. 53(1).

<sup>57</sup> (1), s. 154(1).

<sup>58</sup> (2), s. 18(1).

<sup>59</sup> (1), s. 147.

<sup>60</sup> (1), s. 234(2).

<sup>61</sup> (2), s. 23.

<sup>62</sup> (1), s. 102; (2), Bk. III, Rule VIII, s. 1.

<sup>63</sup> (3), s. 1.

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



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

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

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

<sup>66</sup> (2), s. 463.

<sup>67</sup> (1), s. 213.

<sup>68</sup> (1), s. 19(1).

<sup>69</sup> (1), s. 1638j(1).

<sup>70</sup> (1), s. 61(1).

<sup>71</sup> (1), s. 25(1).

<sup>72</sup> (1), ss. 54, 56.

<sup>73</sup> (5), s. 121(2).

<sup>74</sup> (7), s. 393(8).

<sup>75</sup> (17), s. 49(1).

develop a new agreement which better reflected the provisions of the Convention.<sup>76</sup>

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

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

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

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

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

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

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

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

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

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

<sup>79</sup> (2), s. 3.

<sup>80</sup> For more, see [www.patacon.com.ar/](http://www.patacon.com.ar/).

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

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

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

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

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

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

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

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

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

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

<sup>85</sup> (1), s. 154(1).

<sup>86</sup> (2), s. 18(2).

<sup>87</sup> (2), s. 23.

<sup>88</sup> (4), s. 1.

<sup>89</sup> (1), s. 151.

<sup>90</sup> (1), s. 102; (2), Bk. III, Rule VIII, s. 2.

<sup>91</sup> (1), s. L.143-1.

<sup>92</sup> (1), s. 32(1)(b).

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

<sup>94</sup> (1), s. 10(2)(b).

<sup>95</sup> (1), s. 46(2).

<sup>96</sup> (1), s. 29(2).

<sup>97</sup> (1), ss. 54, 77.

<sup>98</sup> (1), s. 59(2). See also *Venezuela* (1), s. 145.

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

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

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

<sup>100</sup> (1), s. 83(1)(b).

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

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

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

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

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

<sup>103</sup> (1), s. 29(4).

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

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

<sup>106</sup> (1), s. 270(3).

<sup>107</sup> (1), s. 154(1).

<sup>108</sup> (1), s. 136.

<sup>109</sup> (1), s. 130(8).

<sup>110</sup> (1), s. 174(2).

<sup>111</sup> (1), s. 102; (2), s. 19(4).

<sup>112</sup> (2), s. 24.

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

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



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

**91.** In Australian states, wages may, with the employee's written consent or with authority conferred by an industrial instrument, be paid by cheque, by postal order or money order payable to the employee, or by electronic transfer of funds into an account in the name of the employee (whether or not held jointly with another person) in a financial institution. Regulations to this effect are found in New South Wales,<sup>116</sup> South Australia<sup>117</sup> and Western Australia.<sup>118</sup> In Queensland,<sup>119</sup> the legislation further provides that if wages are to be paid other than in cash, they must be paid without deduction of any charge made because of the form of payment; if an employee accepts payment of wages by cheque, draft or money order that is dishonoured, the employee may recover from the employer by action in a competent court as a debt payable to the employee not only the wages due, but also a reasonable amount for the damages suffered because of the dishonour. In Tasmania<sup>120</sup> many industrial awards stipulate that when an employer decides to pay employees by direct bank transfer, the employer must cover the cost of one deposit and one withdrawal per payment. In addition, at least three months' advance notice must be given of the introduction of pay by direct transfer. Similarly, in New Zealand,<sup>121</sup> the law stipulates that an employer may, with the written consent of a worker or upon the written request

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

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

<sup>116</sup> (5), s. 117(2)(b), (c).

<sup>117</sup> (8), s. 68(2)(b).

<sup>118</sup> (10), s. 17C(1)(b), (c).

<sup>119</sup> (7), s. 393(2)(b), (4), (7).

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

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

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

## **2. Wage payment in kind**

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

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

### **2.1. Evolution of forms of payment in kind**

#### **2.1.1. The truck system and the origins of international regulation**

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

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

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

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

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

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

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

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

**98.** As regards international regulation, mention should be made of the resolution adopted at the 19th Session of the International Labour Conference in 1935 requesting the Governing Body to invite the Office to undertake an inquiry into the “various forms and manifestations of the truck system, into related practices involving deductions from the nominal amount of wages or salaries, and into the legislation concerning these matters in operation in the various countries”.<sup>125</sup> A similar resolution requesting the Governing Body to instruct the Office to prepare a draft text for a draft Convention or Recommendation on the truck system was adopted at the Labour Conference of the American States which are Members of the Organization at Santiago in 1936.<sup>126</sup> The inquiry undertaken by the Office in pursuance of these resolutions was suspended because of the outbreak of the Second World War, at a time when a number of the replies from governments had not yet been received.

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

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

<sup>125</sup> See *Official Bulletin*, Vol. XX, 1935, pp. 101-102.

<sup>126</sup> See *Official Bulletin*, Vol. XXI, 1936, pp. 67-68.

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

### 2.1.2. Fringe benefits, advantages and incentives

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

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

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

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

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

### **2.1.3. Profit-sharing and stock options**

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

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

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

## **2.2. Conditions of application and safeguards respecting payment in kind**

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

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

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

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

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

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

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

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

<sup>132</sup> On this point, see RCE 1991, 243 (*Egypt*).



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

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

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

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

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

<sup>135</sup> (1), s. 174(3).

<sup>136</sup> (1), s. 6(1).

<sup>137</sup> (1), s. 120(1); (2), s. 13.

<sup>138</sup> (1), s. 154(2).

<sup>139</sup> (1), s. 10(2).

<sup>140</sup> (2), s. 102.

<sup>141</sup> (1), s. 144.

<sup>142</sup> (1), s. 26(1).

<sup>143</sup> (1), s. 139.

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

<sup>145</sup> (1), s. 260.

<sup>146</sup> (2), ss. 86, 146.

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

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

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

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

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

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

<sup>149</sup> (1), ss. 123, 129.

<sup>150</sup> (1), ss. 82, 117(1), (2).

<sup>151</sup> (1), ss. 80, 81, 89(3).

<sup>152</sup> (1), ss. 151, 158(3).

<sup>153</sup> (1), ss. 89(1), (3), 95(3).

<sup>154</sup> (1), ss. 7, 11(1)(b); (4), s. 7(1).

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

<sup>156</sup> (3), s. 37.

<sup>157</sup> (1), s. 131(2).

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

**112.** In some cases, national laws and regulations do not either directly authorize the partial payment of wages in kind or formally prohibit it, but simply leave this method of payment totally unregulated. The Government of Jordan, for instance, has reported that its Labour Code does not specify the industries or occupations in which the payment of wages in kind is not authorized, does not prohibit the payment in the form of specific goods or supplies, nor does it determine the proportion of the wages which may be paid in kind. In the same vein, the Government of Saudi Arabia has indicated that there is nothing in the laws in force to prevent wages from being paid in kind, such as in the form of accommodation or transportation, although the basic wage should be in cash. Similarly, in Bahrain<sup>161</sup> and the United Arab Emirates,<sup>162</sup> the national legislation expressly refers to benefits in kind as being part of the worker's wages or remuneration, without however establishing any limits or conditions for the provision of such benefits. Moreover, according to information supplied by the Government of Lithuania, national laws and regulations do not provide for the possibility to pay wages in benefits in kind, however, there are no legal acts formally prohibiting such practice.

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

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

<sup>159</sup> (1), s. 74.

<sup>160</sup> (1), s. 101.

<sup>161</sup> (1), s. 66.

<sup>162</sup> (1), s. 1.

<sup>163</sup> (1), s. 85.

<sup>164</sup> (1), s. 5.

<sup>165</sup> (1), s. 234.

<sup>166</sup> (1), s. 59(2).

payment of wages to be effected by way of cash only and makes no provision for remuneration in kind. This is also the case in certain parts of Australia, where state laws in New South Wales,<sup>167</sup> South Australia<sup>168</sup> and Tasmania<sup>169</sup> provide that wages must be paid in money only.

### 2.2.2. Partial payment in kind

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

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

<sup>167</sup> (5), s. 117(2).

<sup>168</sup> (8), s. 68(2).

<sup>169</sup> (9), s. 51(3).

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

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

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

<sup>173</sup> See, for instance, *Mexico* (2), s. 102.

<sup>174</sup> See, for instance, *Mauritius* (1), s. 10(2).

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

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

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

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

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

<sup>177</sup> See, for instance, *Egypt* (1), s. 1.

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

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

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

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

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

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

<sup>181</sup> (1), s. 129(2), (3).

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

<sup>183</sup> (2), s. 13(1).

<sup>184</sup> (1), s. 42.

<sup>185</sup> (1), s. 127(1).

<sup>186</sup> (1), s. 139(2).

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

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

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

<sup>188</sup> (1), s. 129.

<sup>189</sup> (2), s. 15.

<sup>190</sup> (1), s. 133.

<sup>191</sup> (1), ss. 2, 68, 70.

<sup>192</sup> See, for instance, RCE 2002, 330; RCE 1996, 179; RCE 1977, 176.

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

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

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

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

<sup>193</sup> See, for instance, RCE 2002, 330.

<sup>194</sup> (2), s. 11(2).

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



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

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

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

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

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

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

### **2.2.3. Customary or desirable benefits in kind**

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

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

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

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

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

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

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

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

<sup>200</sup> On this point, see RCE 1993, 245 (*Egypt*).

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

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

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

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

<sup>202</sup> (1), s. 1(2).

<sup>203</sup> (1), s. 30.

<sup>204</sup> (2), s. 458.

<sup>205</sup> (2), s. 11(2).

<sup>206</sup> (1), s. 53(6).

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

<sup>208</sup> (2), s. 824.

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

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

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

<sup>211</sup> (1), ss. 141, 142, 144.

<sup>212</sup> (1), ss. 106, 107.

<sup>213</sup> (1), s. 89.

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

<sup>215</sup> (1), s. 129.

<sup>216</sup> (1), s. 260.

<sup>217</sup> (2), ss. 274, 343.

<sup>218</sup> (1), s. 133.

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

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

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

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

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

<sup>221</sup> (1), s. 13(1).

<sup>222</sup> (1), s. 74.

<sup>223</sup> (1), s. 40.

<sup>224</sup> (1), s. 127(1).

<sup>225</sup> (1), s. 154(2).

<sup>226</sup> (1), s. 139.

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

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

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

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

<sup>228</sup> See ILC, 32nd Session, 1949, *Record of Proceedings*, p. 504.

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

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

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

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

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

<sup>232</sup> (2), s. 458.

<sup>233</sup> (2), s. 1.

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

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



Indonesia,<sup>236</sup> Malaysia,<sup>237</sup> Republic of Moldova,<sup>238</sup> Russian Federation<sup>239</sup> and Singapore.<sup>240</sup>

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

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

<sup>236</sup> (2), s. 12(2).

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

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

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

<sup>240</sup> (1), s. 59.

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

<sup>242</sup> (1), ss. 117, 118.

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

<sup>244</sup> (2), s. 146.

<sup>245</sup> (1), s. 144.

<sup>246</sup> (1), s. 10(2).

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

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

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

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

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

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

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

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

<sup>248</sup> (2), s. 7.

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

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

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

<sup>250</sup> (1), s. 3.

<sup>251</sup> (1), s. 89(2).

<sup>252</sup> (1), s. 114(2).

<sup>253</sup> (1), s. 95.

<sup>254</sup> (1), ss. 1637P, 1638T.

<sup>255</sup> (1), ss. 1613P, 1614T.

<sup>256</sup> (1), s. 6(2).

<sup>257</sup> (1), s. 154(2).

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

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

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

### **2.2.5. Appropriate measures for ensuring adequate protection**

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

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

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

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

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

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

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

<sup>261</sup> See ILC, 31st Session, 1948, *Record of Proceedings*, p. 460.

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

<sup>263</sup> Reports abound, for instance, of hungry workers in transition economies who are paid everything from porcelain vases and precision instruments to pineapples, coffins and fertilizers, instead of their ordinary cash wages, and who are constrained to find a market for the manufactured goods in order to sell or barter them; see [www.icem.org/campaigns/no\\_pay\\_cc/situation.html](http://www.icem.org/campaigns/no_pay_cc/situation.html). The Committee has always taken the view that payments in kind may not be deemed to represent a solution to the problem of wage arrears, and has pointed out that measures taken to reimburse wage arrears should not result in the violation of other provisions of the

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

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

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

<sup>265</sup> (1), ss. 141, 142, 144.

<sup>266</sup> (2), ss. D.96-2-1 to D.96-2-7, D.96-2-11.

<sup>267</sup> (1), s. 151; (3), ss. 190 to 200.

<sup>268</sup> (1), ss. 106, 107.

<sup>269</sup> (1), s. 89.

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

<sup>271</sup> (2), ss. 274, 343.

<sup>272</sup> (2), s. 146.

<sup>273</sup> (1), s. 3.

<sup>274</sup> (1), ss. 7, 11(1)(b); (4), s. 7(1).

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

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

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

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

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

<sup>277</sup> (2), s. 90.

<sup>278</sup> (1), s. 144.

<sup>279</sup> (1), ss. 1637P, 1638T.

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

<sup>281</sup> (1), s. 6(2).

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

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

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

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

<sup>283</sup> (1), s. 74.

<sup>284</sup> (2), s. 13(1).

<sup>285</sup> (1), s. 127(1).

<sup>286</sup> (1), s. 22(2)(a).

<sup>287</sup> (1), s. 48(a).



**150.** Mention should also be made of those countries where the requirement of the prior approval of the benefits in kind by a government authority on a case-by-case basis is considered to protect workers adequately against inappropriate or worthless allowances in kind and, by the same token, satisfy the requirements of this provision of the Convention. In *Malaysia*,<sup>288</sup> for instance, the law provides that any amenities or services other than food, lodging, fuel, light, water and medical assistance have to be approved by the Director-General of Labour before an employer may include such amenities or services in the terms of a contract of service with an employee. In Australia, state laws in Queensland<sup>289</sup> authorize the payment of wages in the form of allowances in kind only if such payment is permitted by an industrial instrument. Such industrial instruments have to be approved by the Queensland Industrial Relations Commission, which must ensure that awards provide for secure, relevant and consistent wages and employment conditions. Similarly, in Western Australia,<sup>290</sup> employees cannot be directly or indirectly compelled by an employer to accept goods, accommodation or services of any kind instead of money as any part of their wages, unless this is authorized or required under the workplace agreement or award.

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

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

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

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

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

<sup>292</sup> (1), ss. 206(2), 212; (2), ss. 3, 4.

<sup>293</sup> (2), s. 102.

<sup>294</sup> (1), s. 231.

<sup>295</sup> (3), s. 87; (4), s. 3(a).

<sup>296</sup> (1), s. 30(a).

The same statement of principle without any indication as to its practical application is also found in the legislation of Guinea-Bissau<sup>297</sup> and Mozambique.<sup>298</sup>

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

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

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

<sup>297</sup> (1), s. 102(2).

<sup>298</sup> (1), s. 53(2).

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

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

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

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

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

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

<sup>303</sup> (1), s. 3.

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

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

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

<sup>307</sup> (1), s. 6(3).

<sup>308</sup> (2), s. 90.

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

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

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

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

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

<sup>311</sup> (1), ss. 27(1)(c), 30.

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

<sup>313</sup> (1), s. 22(2).

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

<sup>315</sup> (1), s. 47(e).

<sup>316</sup> (3), s. 10.

<sup>317</sup> (2), ss. 2D.17, 2D.18.

<sup>318</sup> (2), ss. D.96-2-8, D.96-2-12.

<sup>319</sup> (3), ss. 201, 205.

<sup>320</sup> (1), s. 91.

<sup>321</sup> (5), s. 4.

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

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

<sup>322</sup> (5), s. 79.

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>329</sup> (1), s. 40.

<sup>330</sup> (2), s. 102.

<sup>331</sup> (1), s. 231.

<sup>332</sup> (3), s. 87.

<sup>333</sup> (1), s. 30(b).

<sup>334</sup> See, for instance, RCE 2001, 356 (*Costa Rica*).

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

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

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## CHAPTER III

### FREEDOM OF WORKERS TO DISPOSE OF THEIR WAGES

**164.** The protection of the freedom of workers to dispose of their wages is one of the core aspects of the Convention. In practice, there is little point in ensuring that workers are paid their wages in legal tender, at regular intervals or in full, if they are not able to spend such earnings as they wish. Article 5 of the Convention requires that wages be paid directly to the worker concerned, subject to any exceptions provided by national laws or regulations, collective agreement or arbitration award, or agreement by the individual worker. Article 6 categorically prohibits employers from limiting in any manner the freedom of workers to dispose of their wages, while Article 7 recognizes the right of workers to be free from any coercion to make use of a company store, where such exists. This latter Article further requires the competent authority to take appropriate measures to ensure that works stores are not operated for the purpose of securing profit, but for the benefit of the workers concerned, and that the goods are sold at fair and reasonable prices, where access to other stores and services is not possible. These provisions are supplemented by Paragraph 9 of the Recommendation, which calls for appropriate measures to be taken to encourage arrangements for the association of representatives of the workers concerned, and more particularly members of works welfare communities or similar bodies, in the general administration of works stores or similar services established in connection with an enterprise for the sale of commodities or provision of services to the workers. In the following paragraphs, the Committee first analyses the scope and then examines the effect given to these provisions in the law and practice of member States.

#### **1. Payment of wages directly to the worker**

**165.** As might be expected, there has always been general recognition of the principle that wages must be paid directly to the worker concerned. There has also been agreement, however, that such principle should carry certain exceptions, as may be authorized by national laws, regulations or a public authority, where it might be to the worker's own interest for the wages to be paid to another person, such as in the case of convicts, minors or persons under

guardianship, or in the case of arrangements intended to ensure the maintenance of the worker's family.<sup>1</sup>

**166.** Article 5 therefore establishes the principle of direct payment, but permits exceptions by laws, regulations, collective agreements or arbitration awards, and even with the agreement of the worker. This provision therefore appears to leave considerable flexibility as to the means by which it is implemented. However, if an employer were to pay the wages due to a worker to a third party, without being authorized to do so by one of the means mentioned in Article 5, this would presumably not constitute a valid settlement of the debt owed to the worker. A question may therefore arise as to whether the payment of wages by bank transfer is consistent, among others, with the requirement for the payment of wages directly to the worker concerned. The Committee takes the view that any formal arrangements regulating the payment of wages by postal or bank transfer would appear to fall well within the exceptions permitted by Article 5 (that is, an exception provided by national laws or regulations or with the agreement of the worker), and therefore pose no problem in regard to this Article.<sup>2</sup>

**167.** Furthermore, the Committee is of the opinion that Article 5 is to be read separately from Articles 8 and 10 respecting deductions and the attachment and assignment of wages, even though these subjects seem to fall within its scope. Article 5 of the Convention is aimed at the manner of payment of wages, rather than at the conditions under which and the limits within which wages may be subject to deductions, or may be attached or assigned. It should not therefore be interpreted as requiring the total amount of the wages earned to be paid directly to the worker concerned, but rather whatever amount is actually due after any sums have been deducted or attached in accordance with the applicable rules and regulations. In any event, by permitting exceptions to the principle of the direct payment of wages "as provided by national laws or regulations, collective agreement or arbitration award, or where the employee concerned agrees to the contrary", Article 5 leaves sufficient latitude for the attachment or assignment of wages in cases which lie within the scope of Articles 8 and 10 of the Convention, subject evidently to the protection set forth in Article 10, paragraph 2.

**168.** Turning now to the review of national law and practice, the labour legislation in many countries makes specific provision for the direct payment of remuneration to the worker concerned. Among the different expressions used to denote the requirement for direct payment, national laws and regulations sometimes refer to "wages paid to the employee in person," or "paid to the

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<sup>1</sup> See ILC, 31st Session, 1948, *Record of Proceedings*, p. 461, and ILC, 32nd Session, 1949, *Record of Proceedings*, p. 505.

<sup>2</sup> It should be noted that this question was considered in an informal opinion given by the Office in 1974 at the request of the Government of Japan.

individual employee”, or “actually paid to him”. This is the position, for instance, in *Belgium*,<sup>3</sup> *Costa Rica*,<sup>4</sup> *Malaysia*,<sup>5</sup> *Mexico*,<sup>6</sup> *Russian Federation*<sup>7</sup> and *Sri Lanka*.<sup>8</sup> In *Bolivia*,<sup>9</sup> the law requires that homeworkers must be paid in full and directly, but no similar provision is made for other workers. Furthermore, in many of the countries that have not ratified the Convention, the legislation provides for the payment of labour remuneration directly to the worker concerned, such as in *Mozambique*,<sup>10</sup> *Peru*,<sup>11</sup> *Rwanda*,<sup>12</sup> *Singapore*<sup>13</sup> and *Viet Nam*.<sup>14</sup> In *Namibia*,<sup>15</sup> the law requires wages to be handed over to the employee in a sealed envelope. In *Qatar*,<sup>16</sup> wages must be paid to the worker in person, whereas if the worker is a minor, the wages may be paid to the guardian or the adult next of kin, provided that the guardian or next of kin so requests in writing.

**169.** Regulations in a number of countries allow for exceptions to the principle of the direct payment of wages as may be authorized by existing laws.

<sup>3</sup> (1), s. 5. This is also the case in *Bahamas* (1), s. 60(1); *Barbados* (1), s. 5; *Botswana* (1), s. 83(1); *Bulgaria* (1), s. 270(3); *Colombia* (1), s. 139; *Cuba* (1), s. 124; *Czech Republic* (1), s. 120(1); (2), s. 11(1); *Dominica* (1), s. 5; *Dominican Republic* (1), s. 196; *Ecuador* (2), s. 86; *France* (3), s. 1239; *Guatemala* (2), s. 94; *Guyana* (1), s. 18(2); *Honduras* (2), s. 370; *Hungary* (1), s. 158(3); *Iraq* (1), s. 49(1); *Israel* (1), s. 6(a); *Malta* (1), s. 19(2); *Republic of Moldova* (2), s. 19(1); *Netherlands* (1), s. 1638F; *Nicaragua* (2), s. 81; *Panama* (1), s. 154; *Paraguay* (1), s. 237; *Philippines* (1), s. 105; *Poland* (1), s. 86(3); *Slovakia* (1), s. 130(1), (4); *Sudan* (1), s. 35(8); *Suriname* (1), s. 1614F; *Swaziland* (1), s. 46(1); *Uganda* (1), s. 33; United Kingdom: *Montserrat* (21), s. 5; *Venezuela* (1), s. 148; *Zambia* (1), s. 44(1).

<sup>4</sup> (1), s. 171.

<sup>5</sup> (1), s. 25(1).

<sup>6</sup> (2), s. 100.

<sup>7</sup> (1), s. 136(5).

<sup>8</sup> (1), s. 19(1)(a); (2), s. 2(a).

<sup>9</sup> (2), s. 26. The Committee has been requesting the Government for the last 20 years to indicate the measures taken to ensure that wages are paid directly to all workers.

<sup>10</sup> (1), s. 53(3). This is also the case in *China* (1), s. 6; *Estonia* (2), s. 31(2); *Finland* (1), Ch. 2, s. 16; *Japan* (2), s. 24; (5), s. 53; *Kenya* (1), s. 4(1); *Republic of Korea* (1), s. 42(1); *Oman* (1), s. 54; *Slovenia* (1), s. 135(1); United Kingdom: *Gibraltar* (11), s. 17(1); *Jersey* (17), s. 5; *Zimbabwe* (4), s. 11(1). In *Canada* (1), ss. 178, 247, the requirement of payment of wages directly to the worker applies to a majority of the Canadian workforce; see also *Northwest Territories* (10), s. 12(1); *Nova Scotia* (12), s. 79(1)(a); *Ontario* (14), ss. 11(3), 112(1); *Quebec* (16), s. 44; *Saskatchewan* (17), s. 47(1).

<sup>11</sup> (3), s. 1.

<sup>12</sup> (1), s. 93.

<sup>13</sup> (1), s. 56.

<sup>14</sup> (1), s. 59(1).

<sup>15</sup> (1), s. 36(3)(a).

<sup>16</sup> (1), s. 29(3).

By way of example, the labour laws in *Botswana*<sup>17</sup> and *Malta*<sup>18</sup> recognize the possibility of derogating from the principle of direct payment where payment to another person of any part of the employee's wages is expressly permitted under relevant legislation. Similarly, in the *Czech Republic*<sup>19</sup> and *Slovakia*,<sup>20</sup> in the absence of a written authorization, wages may be paid to a person other than the employee only if so provided by special laws.

**170.** In certain countries, wages may be paid to another person by decision of a court or some other authority assigning the worker's wages, in full or in part, to persons who are responsible for the sound management of the worker's income. This mainly concerns certain categories of persons under legal disability or guardianship, such as minors, alcoholics and convicts. In *Hungary*,<sup>21</sup> for instance, the law provides that wages are payable to the worker himself, unless the latter is restrained by a court ruling or some other authority. Similarly, in *Malta*,<sup>22</sup> wages are paid directly to the employees to whom they are due, except as may be otherwise provided by virtue of an order made by a competent court. In *Venezuela*,<sup>23</sup> the worker's spouse may request authorization from the labour inspectorate to receive up to 50 per cent of the wages due to the worker for family reasons or reasons of social interest. In addition, the Government of Mozambique reports that it is possible in certain cases, for instance owing to constant alcoholism or wastefulness, for the Legal Institute to issue a ruling of legal irresponsibility enabling the worker's spouse to collect the wages on his behalf, once permission has been granted by the competent authorities.

**171.** In many cases, national laws and regulations provide for exceptions to the principle of the direct payment of wages with the worker's consent. In *Bulgaria*,<sup>24</sup> upon the worker's request in writing, wages may be paid to her or his relatives, while in *Argentina*<sup>25</sup> and the *Philippines*,<sup>26</sup> a written authorization

<sup>17</sup> (1), s. 83(1), (2). This is also the case in *Barbados* (1), ss. 5, 6; *Guyana* (1), s. 18(2); *Philippines* (2), Bk. III, Rule VIII, s. 5; *Russian Federation* (1), s. 136(5).

<sup>18</sup> (1), s. 19(2).

<sup>19</sup> (1), s. 120(4); (2), s. 11(4).

<sup>20</sup> (1), s. 130(6).

<sup>21</sup> (1), s. 158(3).

<sup>22</sup> (1), s. 19(2).

<sup>23</sup> (1), s. 149. This is also the case in *Chile* (1), s. 59, when the worker is declared deprived or vicious by decision of a labour court.

<sup>24</sup> (1), s. 270(3). See also *China* (1), s. 6; *Japan* (5), s. 56.

<sup>25</sup> (1), s. 129. This is also the case in *Costa Rica* (1), s. 171; *El Salvador* (2), s. 135; *Guatemala* (2), s. 94; *Panama* (1), s. 144; *Peru* (3), s. 2.

<sup>26</sup> (1), s. 105; (2), Bk. III, Rule VIII, s. 5. The law further provides that in cases of *force majeure* rendering direct payment impossible, or under other special circumstances to be determined by the Secretary of Labor, the worker may be paid through another person under written authority given by the worker for that purpose.

is needed for the payment of wages to a member of the worker's family. In *Israel*,<sup>27</sup> upon the written instruction of the employee, the wage may be paid to her or his spouse, parent, child, fellow employee, or the kibbutz of which she or he is a member, while in *Colombia*,<sup>28</sup> *Ecuador*<sup>29</sup> and *Slovakia*,<sup>30</sup> upon written authorization by an employee, wages may be paid to the person named in such authorization. In more general terms, the law in the *Russian Federation*,<sup>31</sup> permits exceptions to the principle of the direct payment of wages when so provided by the labour contract, while in *Malta*,<sup>32</sup> the payment of wages must be effected directly to the worker, except where the latter has agreed to the contrary.

**172.** In some other countries, such as *Italy*<sup>33</sup> and the *Netherlands*,<sup>34</sup> similar principles are deduced from the provisions of the Civil Code relating to obligations in general – and therefore also to obligations arising out of an employment relationship – which require a debtor to pay debts directly to the creditor or to a person designated by her or him, or to any other person as may be authorized by law or by a court decision.

**173.** In certain countries, even though there is no express legislative provision concerning the direct payment of wages, standard practice presumably complies with the requirements of this Article of the Convention, since the worker has to sign the pay slip delivered by the employer at the time of each payment. In fact, a legislative provision requiring the worker's signature or fingerprint on the payroll, wage statement or other wage record is deemed to offer sufficient guarantees that wages are paid directly to the worker concerned. According to the laws of many French-speaking African countries, the payment of wages must be recorded in a document made out or certified by the employer

<sup>27</sup> (1), s. 6(a).

<sup>28</sup> (1), s. 139. This is also the case in the *Czech Republic* (1), s. 120(4); (2), s. 11(4); *Dominican Republic* (1), s. 196; *Honduras* (2), s. 370; *Kenya* (1), s. 4(1)(c); *Mexico* (2), s. 100; *Paraguay* (1), s. 237; *Qatar* (1), s. 29(3); *Swaziland* (1), s. 50(2); *Uganda* (1), s. 33; *Zambia* (1), s. 44(1). Similarly, in *Poland* (1), s. 86(3), the law permits the payment of remuneration to be performed in a manner other than personal delivery to the employee at the latter's prior consent in writing. In *Indonesia* (2), s. 10(3), (4), the payment of the wage through a third party may only be permitted with the written authorization of the worker concerned, where the latter for some reason is not able to receive the wage directly, such authorization being valid only for one payment. See also *Hungary* (1), s. 158(3), *Iraq* (1), s. 49(1) and *Sudan* (1), s. 35(8), where the law permits wage payments to be made to the worker's representative or proxy without setting any particular conditions for such payment.

<sup>29</sup> (2), s. 86.

<sup>30</sup> (1), s. 130(6).

<sup>31</sup> (1), s. 136(5).

<sup>32</sup> (1), s. 19(2).

<sup>33</sup> (1), s. 1188. See also *France* (3), s. 1239 and *Greece* (1), s. 417.

<sup>34</sup> (1), s. 1421.

or her or his representative and initialled by the worker concerned, or by two witnesses appointed by the worker, if the latter is unable to write. The said document, which is distinct from an individual pay slip or wage register, must be conserved by the employer in the same manner as any accounting document and must be produced at the request of labour inspectors. This is the case, for instance, in *Cameroon*<sup>35</sup> and *Senegal*.<sup>36</sup> Similarly, in the *Syrian Arab Republic*<sup>37</sup> and the *United Republic of Tanzania (Zanzibar)*,<sup>38</sup> the law requires the employee's signature or thumbprint in the remuneration book or pay card kept by the employer. In *Egypt*<sup>39</sup> and *Saudi Arabia*,<sup>40</sup> the law requires the worker to acknowledge receipt of the wage by signing the wage register, the wage slip or a special receipt drawn up for the purpose, while in *Brazil*<sup>41</sup> and *Yemen*,<sup>42</sup> an employer is deemed to have discharged the obligation to pay the worker's wages only after the worker has signed or fingerprinted the document showing the wage entitlements.

**174.** In many cases, the direct payment of wages seems also to result from other provisions, such as those stipulating that workers who are absent on pay day are entitled to draw their wages during the normal hours of the pay office in accordance with the internal rules of the enterprise. This is, for instance, the case in *Gabon*,<sup>43</sup> *Niger*<sup>44</sup> and *Togo*.<sup>45</sup> Similarly, in *New Zealand*,<sup>46</sup> the law provides that where any wages become payable to a worker who is for the time being absent from the proper or usual place for their payment, payment may be made by postal order, money order or cheque. In contrast, provisions relating to the

<sup>35</sup> (1), s. 69(1). This is also the situation in *Benin* (1), s. 223; *Central African Republic* (1), s. 106; *Chad* (1), s. 263; *Comoros* (1), s. 105; *Congo* (1), s. 90; *Côte d'Ivoire* (1), s. 32.5; *Djibouti* (1), s. 101; *Gabon* (1), s. 153; *Guinea* (1), s. 217; *Madagascar* (1), s. 74; *Mauritania* (1), s. 91; *Niger* (1), s. 163; *Togo* (1), s. 97; *Tunisia* (1), s. 144.

<sup>36</sup> (1), s. L.116.

<sup>37</sup> (2), s. 1. See also *Burkina Faso* (1), s. 114.

<sup>38</sup> (2), s. 48(2)(c).

<sup>39</sup> (1), s. 35. See also *Libyan Arab Jamahiriya* (1), s. 37.

<sup>40</sup> (1), s. 118.

<sup>41</sup> (2), s. 464.

<sup>42</sup> (1), s. 66(2).

<sup>43</sup> (1), s. 152. This is also the case in *Benin* (1), s. 222; *Cameroon* (1), s. 68(4); *Central African Republic* (1), s. 105; *Chad* (1), s. 262; *Côte d'Ivoire* (1), s. 32.4; *Djibouti* (1), s. 100; *Mali* (1), s. L.103; *Mauritania* (1), s. 90; *Rwanda* (1), s. 93. Similar provisions are found in the provincial statutes of many Canadian jurisdictions; see, for instance, *Manitoba* (7), s. 89(1); *New Brunswick* (8), s. 35(3); *Prince Edward Island* (15), s. 30(4).

<sup>44</sup> (1), s. 161.

<sup>45</sup> (1), s. 96.

<sup>46</sup> (1), s. 10.

place and time of payment are not relevant to the manner of payment as such and cannot therefore be deemed to implicitly ensure the direct payment of wages.

**175.** Finally, in a number of countries which have ratified the Convention, such as *Algeria, Belarus, Cyprus, Islamic Republic of Iran, Kyrgyzstan, Lebanon, Mauritius, Nigeria, Norway, Romania, Tajikistan and Ukraine*, there appear to exist no specific legislative provisions giving effect to the requirement for the direct payment of wages to the worker concerned or otherwise regulating the conditions under which wages may be paid to another person. In those member States not bound by the provisions of the Convention, the direct payment of wages to the worker is not expressly required under existing regulations in Bahrain, Croatia, Ghana,<sup>47</sup> India, Jordan, Kuwait and the United Arab Emirates.

## **2. General prohibition against limiting the freedom of workers to dispose of their wages**

**176.** Article 6 provides that employers shall be prohibited from limiting in any manner the freedom of the worker to dispose of his wages. As the preparatory work and the Conference discussions which led to the adoption of the Convention clearly show, this provision, which places an absolute prohibition upon employers from placing any limitations on the freedom of workers to dispose of their wages, met with unanimous support and was adopted without discussion.<sup>48</sup>

**177.** Article 6 is aimed at protecting the full discretion of workers as to the use they wish to make of their wages against any kind of duress that an employer might exert in this regard. Its scope is broad enough to include not only earnings that have already been paid, but also wages still due to the workers. It therefore prohibits both limitations imposed on the freedom of workers to dispose of their wages after they have received them (e.g. the obligation to place part of their earnings in a works saving fund) and limitations applying to worker's claims in general (e.g. agreements regarding wage stoppages or deductions for certain purposes). On the other hand, the terms of Article 6 clearly suggest that the Article does not affect limitations freely entered into by workers themselves, i.e. restrictions to which employees give their consent freely and without pressure of any kind. In this sense, an assignment based upon the worker's free

<sup>47</sup> The Government has reported that under the new draft Labour Code now before the Parliament specific provision will be made for the payment of labour remuneration directly and at regular intervals to workers.

<sup>48</sup> See ILC, 31st Session, 1948, Report VI(c)(1), p. 15; ILC, 31st Session, 1948, Report VI(c)(2), p. 73; ILC, 32nd Session, 1949, Report VII(2), p. 16. See also ILC, 31st Session, 1948, *Record of Proceedings*, p. 461 and ILC, 32nd Session, 1949, *Record of Proceedings*, p. 505.



consent given to a third party may therefore be honoured by deductions effected by an employer from the wages due.<sup>49</sup>

**178.** The wording of Article 6 implies the existence of an appropriate legislative provision specifically prohibiting employers from exercising any kind of constraint on the use made by workers of their wages. Yet, governments frequently assert that, despite the absence of a general provision reflecting the terms of Article 6, workers can in practice dispose of their wages freely in view of existing legislative guarantees concerning other provisions of the Convention, such as those relating to the method of payment, the limits of authorized deductions or the operation of works stores. The Committee takes the view that when national legislation gives full effect to Articles 7, 8, 9 and 10 of the Convention, which are very closely related to the protection of the workers' capacity to retain control of their earnings – and therefore to Article 6 – the freedom of workers to dispose of their wages may appear to be adequately protected. However, provisions regulating deductions from wages, the attachment of wages or the use of company stores do not cover all the ways in which workers can be limited in their freedom to dispose of their wages: one example is through exerting pressure on workers to make contributions to certain funds or to spend their wages in specific places. In the Committee's opinion, it is therefore necessary for implementing legislation to contain an express provision generally prohibiting employers from restricting the freedom of workers to dispose of their wages, as set forth in Article 6 of the Convention. In the same way, the Committee considers that statements to the effect that the freedom of workers to dispose of their wages is a natural consequence of the right to property guaranteed in civil law are not sufficient to give effect to the requirements of this Article of the Convention, however necessary this protection of the right to property may be.

**179.** A good illustration of how the principle of the freedom of workers to dispose of their wages is sometimes strained in practice is provided by the various "deferred pay" or "compulsory remittance" systems established in different countries in respect of migrant workers. These systems generally consist of retaining a portion of the worker's monthly wages, which is often more than half of the agreed remuneration, and transferring it to the country of emigration on the pretext that it is in the worker's own interests to recover a fairly substantial amount of cash upon returning home.

**180.** In certain cases, the Committee has questioned the conformity of such deferred payment arrangements with existing standards relating to the protection of wages, and particularly with the principle of unimpeded use of the wages earned, which implies the direct payment of the full amount at fixed

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<sup>49</sup> A similar view was taken by the Office in an informal opinion given in 1954 at the request of the Government of the Federal Republic of Germany; see *Official Bulletin*, Vol. XXXVII, 1954, pp. 386-387.

intervals to enable the worker to avoid incurring debt. In *Nigeria*, for instance, successive labour laws enacted over the past 30 years provide that the Minister for Employment, Labour and Productivity may at his discretion allow the deferment of the payment of up to 50 per cent of a recruited worker's wages until the completion of the contract, and that upon completion of the contract the amount of the deferred wages shall be paid to the worker at such place and in such manner as the Minister may direct. The Committee has drawn attention to the possible inconsistency of this system with the requirements of the Convention, and particularly Article 6, which prohibits any kind of constraint being placed on the use made by workers of their wages, and Article 12, which requires payment at regular intervals, especially if sufficient guarantees are not provided to ensure that: the deferment of wages is to be practised only with the worker's consent or at her or his specific request; that a recruited worker whose employment is terminated before the completion of the contract is entitled to withdraw the accumulated wages without delay; and that the employer (who may not necessarily be required to make appropriate deposits) is in practice in a position to pay all the deferred wages due upon the completion of the recruited worker's contract.<sup>50</sup>

**181.** Reference should also be made in this connection to a similar system of compulsory deferred payment of wages which was reportedly formerly practised in South Africa in respect of mineworkers recruited from neighbouring countries such as Lesotho, Malawi and Mozambique. Under this system, 60 to 90 per cent of the wages earned were not paid directly to the miners, but were transferred to their home countries as deferred pay to be received as a lump sum only upon the completion of their contract.<sup>51</sup> The Committee considers that, under a compulsory deferred pay system such as those described above, the freedom of workers to dispose of their wages is manifestly impeded as to where and when they may spend their wages, since most of these wages are not available neither in the place in which they are earned nor at the time they are due. It is therefore essential to ensure that such deferred pay systems are only operated on a purely voluntary basis, due regard being had to the requirements of Articles 6 and 12, paragraph 1, of the Convention.

**182.** Most importantly, the question of the deferred payment of part of workers' wages was raised in the context of the complaint filed in 1981 under article 26 of the ILO Constitution for non-observance of certain international labour Conventions by the *Dominican Republic* and Haiti. Among the various issues relating to the application of the Protection of Wages Convention by the *Dominican Republic* with respect to Haitian workers employed on sugar plantations, the Commission of Inquiry established to examine the complaint

<sup>50</sup> For instance, the Committee has addressed a direct request in this sense to *Nigeria* in 1975 and 1977.

<sup>51</sup> For more, see W.R. Böhning (ed.): *Black migration to South Africa*, ILO, 1981, pp. 117-130.

considered various arrangements for the deferred payment of wages operated in the state-owned and private sugar plantations. According to the complainants' allegations, under the terms of the recruitment contracts between the Haitian Government and the State Sugar Board of the *Dominican Republic*, illegal deductions were made from the wages of Haitian workers, ostensibly to provide them with compulsory savings which would be given to them on their return to Haiti, but the accumulated amounts were never paid to them. In some cases, a deduction of \$1 per fortnight was made, while in others an "incentive payment" of 50 centavos per metric ton of sugar cane cut and loaded was retained and accrued for payment at the end of the harvest period. Essentially, these were deliberate measures intended to prevent the flight of workers to other plantations.<sup>52</sup>

**183.** The Government of the *Dominican Republic* acknowledged that the practice of retaining \$1 per fortnight had given rise to many practical difficulties and it was eventually discontinued. The sums in question were to be remitted to the Haitian Embassy for distribution to workers through the reception committee at the frontier upon the workers' return. However, this practice was not always followed and payments were only made with considerable delays, as it was difficult to trace the workers after their return. As regards the "incentive payment", it was made directly by the employers to the workers on the basis of non-negotiable vouchers, which could not be cashed before the end of the harvest. Workers had been unable to obtain their incentive pay because it was often paid two months after the end of the harvest. At times, workers had been required to make payments to guards or officials to obtain the sums due to them or to obtain them without delay.

**184.** In reaching its conclusions, the Commission of Inquiry observed that the arrangements for deductions or incentive pay imposed on plantation workers were inconsistent with Article 6 of the Convention, which provides that employers shall be prohibited from limiting in any manner the freedom of the worker to dispose of his wages, and it recalled the Committee of Experts' earlier observations to the effect that the legislation of the *Dominican Republic* was defective because it contained no general prohibition of this nature.<sup>53</sup> The Commission of Inquiry recommended the abolition of the imposed system of deferred payment of that part of cane-cutters' remuneration designated as "incentive pay" and the incorporation of the "incentive pay" into the workers' wages, to be paid regularly on the days fixed for that purpose. Moreover, the

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<sup>52</sup> See the report of the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance of certain international labour Conventions by the Dominican Republic and Haiti with respect to the employment of Haitian workers on the sugar plantations of the Dominican Republic, *Official Bulletin*, Vol. 66, 1983, Special Supplement, paras. 236-253, pp. 68-72.

<sup>53</sup> *ibid.*, paras. 497-500, p. 147.

Commission emphasized that legislative changes were needed to ensure the observance of the Protection of Wages Convention, particularly in order to require the payment of wages directly to the worker and to establish a general prohibition upon employers from limiting the freedom of the worker to dispose of his wages.<sup>54</sup>

### 3.1. Freedom of workers to dispose of their wages and deferred payment of wages

The Commission has had to consider questions arising out of two distinct arrangements for deferred payment of part of workers' wages. The first was in operation up to and including the 1979-80 sugar harvest. It involved the deduction of \$1 each fortnight from the wages of workers recruited under the contracts between the State Sugar Board and the Government of Haiti. The money so deducted was to be accumulated and remitted at the end of the harvest to the Haitian Embassy, for distribution to the workers on their return to Haiti. The other system has been in operation since the 1980-81 harvest. It involves the deferred payment, at the end of the harvest, of that part of the cane-cutters' remuneration which is described as an "incentive payment" (that is 0.50 pesos out of the total wage of 2.33 pesos per metric ton of cane cut and loaded). [...] The Commission observes that the deductions in question were imposed by virtue of contracts between the State Sugar Board (the workers' employer) and the Government of Haiti. They were inconsistent with Article 6 of the Protection of Wages Convention, which provides that employers shall be prohibited from limiting in any manner the freedom of the worker to dispose of his wages. As has been noted by the Committee of Experts on the Application of Conventions and Recommendations, the legislation of the Dominican Republic is defective, because it contains no general prohibition of this kind. Since the 1980-81 harvest, a different system of deferred payment has been in operation on the plantations of the State and of the Casa Vicini. It affects the "incentive payment" of 0.50 pesos per metric ton, which constitutes between one-fifth and one-quarter of cane-cutters' remuneration. The vouchers for these payments, unlike the tickets for the basic wage, are not negotiable and therefore cannot be cashed before the end of the harvest. The payments are made directly by the undertakings to the workers. [...] Whatever the situation with regard to the actual payment of the "incentive" pay, this system of deferred payment of wages, imposed for certain workers by contract between the employer and the Government of Haiti and for others by the employer, is contrary to Article 6 of the Protection of Wages Convention.

Source: Report of the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance of certain international labour Conventions by the Dominican Republic and Haiti with respect to the employment of Haitian workers on the sugar plantations of the Dominican Republic, *Official Bulletin*, Vol. 66, 1983, Special Supplement, paras. 494-500, pp. 145-147.

<sup>54</sup> *ibid.*, paras. 541-543, p. 159.

**185.** As regards systems for the compulsory remittance of earnings, it will be recalled that in 1982 the Government of the *Philippines* enacted legislation requiring mandatory remittances to the country of a portion of the wages earned by Filipino workers abroad. These remittances amounted to 50 or 70 per cent of the worker's basic wage, depending on the kind of work performed, and the obligation to make the remittances had to be stipulated in the contract of employment. Following the Committee's comments to the effect that such provisions were not compatible with Article 6 of the Convention, the Government amended its legislation to provide for remittances by overseas workers on a purely voluntary basis.<sup>55</sup>

**186.** Turning to national law and practice, Article 6 is given legislative expression in most countries by means of a specific provision formally prohibiting employers from placing any restraint on the freedom of workers to dispose of their wages. In the large majority of cases, the law follows the terms of Article 6 to the letter and provides that it is unlawful for the employer to restrict in any manner whatsoever the right of workers to spend their remuneration in any way they please. This is the case, for instance, in *Brazil*,<sup>56</sup> *Chad*,<sup>57</sup> *Israel*,<sup>58</sup> *Seychelles*<sup>59</sup> and *Ukraine*.<sup>60</sup>

**187.** In certain countries, the national laws and regulations go further and specify that any agreement containing provisions relating to the manner in which wages are to be spent shall be declared null and void and also that the employer is forbidden to make the engagement of workers dependent on their spending their wages in a particular way. For instance, in the Australian State of New

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<sup>55</sup> For instance, the Committee has addressed a direct request in this sense to the *Philippines* in 1984, 1987 and 1990.

<sup>56</sup> (2), s. 462(4). This is also the case in *Belgium* (1), s. 3; *Benin* (1), s. 220(4); *Cameroon* (1), s. 77; *Comoros* (1), s. 112(1); *Côte d'Ivoire* (1), s. 32.1; *Democratic Republic of the Congo* (1), s. 79(4); *Gabon* (1), s. 160; *Iraq* (1), s. 50; *Kenya* (1), s. 4(9); *Luxembourg* (1), s. 5; *Republic of Moldova* (2), s. 16(1); *Niger* (1), s. 158(4); *Paraguay* (1), s. 239; *Philippines* (1), s. 112; (2), Bk. III, Rule VIII, s. 9; *Rwanda* (1), s. 94; *Slovakia* (1), s. 130(7); *Uganda* (1), s. 34; *United Kingdom: Jersey* (17), s. 6; *Yemen* (1), s. 62; *Zambia* (1), s. 49(1). In *Japan* (2), s. 18(1), and the *Republic of Korea* (1), s. 29(1), employers are prohibited from having workers sign accessory labour contracts to let the employers hold or manage savings.

<sup>57</sup> (1), s. 257(4).

<sup>58</sup> (1), s. 4(a).

<sup>59</sup> (1), s. 34(1).

<sup>60</sup> (2), s. 25(1).

South Wales,<sup>61</sup> the Canadian provinces of Newfoundland and Labrador<sup>62</sup> and Saskatchewan,<sup>63</sup> and in Ghana,<sup>64</sup> *Mauritius*<sup>65</sup> and Singapore,<sup>66</sup> the law forbids the employer to impose in any contract of service any terms as to the place in which, or the manner in which, or the person or persons with whom, any wages paid to the employee, or any part thereof, are to be spent or otherwise employed, and any such term contained in any such contract shall be null and void.

**188.** Similarly, in *Mexico*,<sup>67</sup> *Panama*<sup>68</sup> and *Venezuela*,<sup>69</sup> the national legislation provides that all workers have the right to dispose of their remuneration freely and as they please, and that any provision or agreement to the contrary, except in the case of lawful deductions, is null and void. Moreover, in the Australian State of Queensland,<sup>70</sup> *Bahamas*,<sup>71</sup> *Guyana*<sup>72</sup> and New Zealand,<sup>73</sup> no employer may directly or indirectly by himself or his agent impose as a condition, express or implied, for the employment of any employee any terms as to the place or the manner in which any wages are to be expended, and no employer may by himself or his agent dismiss any employee from employment on account of the place at which or the manner in which any wages are expended or fail to be expended.

<sup>61</sup> (5), s. 119. Similarly, in Western Australia (10), s. 17B(2), (3), employees may not be directly or indirectly compelled by an employer to spend any part of their pay in a particular way, while in any proceedings for recovery of any amount due, any amount that employees have been compelled to spend is to be treated as if it had never been paid to them.

<sup>62</sup> (9), s. 36(1).

<sup>63</sup> (17), s. 50.

<sup>64</sup> (1), s. 53(4). This is also the case in *Barbados* (1), s. 4; *Botswana* (1), ss. 84(1), 87(2); *Dominica* (1), s. 4; *Indonesia* (2), s. 14; *Malaysia* (1), s. 26; *Malta* (1), s. 20; *Netherlands* (1), s. 1637S; *Nigeria* (1), s. 2; *Suriname* (1), s. 1613S; *Swaziland* (1), ss. 51(1), 53; *Switzerland* (2), s. 323b; *United Kingdom: Montserrat* (21), s. 4; *Virgin Islands* (22), s. C35; *United Republic of Tanzania* (1), s. 62(1).

<sup>65</sup> (1), s. 8(2), (3).

<sup>66</sup> (1), s. 55.

<sup>67</sup> (2), s. 98.

<sup>68</sup> (1), s. 150.

<sup>69</sup> (1), s. 131.

<sup>70</sup> (7), s. 394.

<sup>71</sup> (1), s. 65.

<sup>72</sup> (1), s. 20.

<sup>73</sup> (1), s. 12.

**189.** In some other countries, such as *Burkina Faso*,<sup>74</sup> *Madagascar*<sup>75</sup> and *Spain*,<sup>76</sup> no general prohibition of the type required by Article 6 is to be found in the national legislation, except with regard to company stores, whose lawful operation is subject, in part, to the condition that the workers are not obliged to obtain their supplies therein. In this respect, the Committee has for many years been drawing attention to the fact that in such cases, except in relation to works stores, employers are not prohibited from limiting the freedom of workers to dispose of their wages and it has invited the governments concerned to consider the possibility of inserting a general prohibition to this effect in national legislation in accordance with the terms of Article 6.

**190.** Similarly, in *Costa Rica*,<sup>77</sup> *Egypt*<sup>78</sup> and Kuwait,<sup>79</sup> the national legislation appears to reflect only partially the requirements of this Article of the Convention, since it merely prohibits employers from compelling workers to purchase foodstuffs or commodities from any specified establishment, or the articles manufactured and goods produced by the employer, but not from limiting or otherwise interfering in any manner with the freedom of workers to dispose of their wages. Furthermore, in Namibia,<sup>80</sup> an employer may not require an employee to make use of any shop held by himself or on his behalf or to buy from him any goods acquired for the purpose of resale at any price exceeding an amount equal to the price paid by the employer, plus the reasonable expenses incurred in so acquiring such goods. In the United States,<sup>81</sup> a certain number of state labour laws prohibit any person from compelling, seeking to compel, or attempting to coerce an employee to purchase goods, wares or merchandise from a particular person, firm or corporation, or dismissing, punishing or blacklisting an employee for failure to purchase goods, wares or merchandise from a particular person, firm or corporation.

<sup>74</sup> (1), ss. 135, 136. This is also the position in *Central African Republic* (1), ss. 115, 116; *Congo* (1), ss. 103, 104; *Djibouti* (1), ss. 110, 111; *France* (1), s. L.148-1; *Guinea* (1), ss. 234, 235; *Mauritania* (1), ss. 108, 109; *Morocco* (1), s. 15(2); (5), s. 3; *Senegal* (1), ss. L.133, L.134; *Togo* (1), ss. 106, 107.

<sup>75</sup> (3), s. 2. The Government has reported, however, that the new draft Labour Code, which is currently under preparation, will include a provision specifically reflecting the requirements of Article 6.

<sup>76</sup> (2), s. 4(b); (3), s. 4(b).

<sup>77</sup> (1), s. 70(a). This is also the case in *Bahrain* (1), s. 73; *Ecuador* (2), s. 44(c); *El Salvador* (2), s. 30(1); *Guatemala* (2), s. 62(a); *Guinea-Bissau* (1), s. 23(g); *Qatar* (1), s. 32; *Syrian Arab Republic* (1), s. 50; *United Arab Emirates* (1), s. 59.

<sup>78</sup> (1), s. 39.

<sup>79</sup> (1), s. 30.

<sup>80</sup> (1), s. 37(d).

<sup>81</sup> See, for instance, *Arizona* (7), s. 23-203; *Idaho* (17), s. 44-902; *New Jersey* (37), s. 34:11-21; *Ohio* (43), s. 4113.18; *Tennessee* (50), s. 50-2-106; *Texas* (51), s. 52.041; *West Virginia* (57), s. 21-5-5.

**191.** Finally, in a number of ratifying States, such as *Algeria, Argentina, Austria, Azerbaijan, Belarus, Bulgaria, Cyprus,*<sup>82</sup> *Islamic Republic of Iran, Kyrgyzstan, Lebanon, Mali, Nicaragua, Norway, Poland, Romania, Russian Federation, Sudan, Tajikistan, Tunisia* and *Uruguay*, there would seem to be no specific legislative provision giving effect to this Article of the Convention. Nor is express reference to the freedom of workers to dispose of their wages made in the laws of certain countries which are not bound by the Convention, such as China, Croatia, India, Jordan, Thailand, United Kingdom and Viet Nam.

### **3. Establishment and operation of works stores**

**192.** Historically, the establishment of company stores has been closely linked to the “truck” system of payment and the operation of “Tommy shops”, which have been reviewed in [Chapter II](#) above. These were stores typically owned by the employer from which employees were required to purchase their food, clothing and supplies. Wages were often paid in the form of tokens or store orders cashed only at a discount, and even when wages were paid in cash, the employees were virtually compelled to make use of stores operated by the employer. Depending on the local circumstances of a business, however, company stores could be of a certain practical utility. In enterprises such as mining, for instance, where the place of work is remote from business centres, employers were often unable to secure employees unless they provided stores for supplies. Unfortunately, the temptation often proved far too strong under such circumstances to gain considerable profits at the workers’ expense.<sup>83</sup>

**193.** The preparatory work for the instruments shows that the question of works stores was one of those most hotly debated at both Conference discussions. According to the text initially proposed by the Office, the operation of works stores would have been subject to the following conditions: (i) the workers concerned are free from any coercion to make use of such services; (ii) no financial profit should accrue to the employer from the operation of such services; and (iii) appropriate measures are taken to ensure the sale of goods at

<sup>82</sup> It should be noted that the Government of *Cyprus* has stated that a draft law on the protection of wages is under preparation and is expected to be submitted to the House of Representatives in 2003. According to the Government’s report, the draft law gives effect to the provisions of the Convention and takes into consideration the provisions of the Recommendation.

<sup>83</sup> According to some accounts, at the beginning of the twentieth century in many company stores across the United States, goods were sold for not less than 100 per cent profit, which meant that labour wages were practically cut in half. On average, prices at company stores were shown to be 25 and 40 per cent higher than elsewhere, while even where prices were not excessive, their very existence conveyed a latent threat of dismissal for the workers who failed to trade there; see Robert Gildersleeve Paterson, “Wage-payment legislation in the United States”, US Department of Labor, *Bulletin of the Bureau of Labor Statistics*, No. 229, 1918, p. 96.



fair and reasonable prices.<sup>84</sup> The provision was criticized as superfluous in view of the outright prohibition of any restriction of the workers' freedom to dispose of their wages, and as difficult to enforce as it was intended to exclude profits in a normal commercial enterprise. It was finally decided to distinguish between two different sets of circumstances: firstly, establishing the principle that workers should be free from any coercion to make use of works stores; and, secondly, to protect workers from abusive practices in cases where they did not have access to other stores or services. It was therefore necessary to maintain the controversial provision concerning the control of profits. The text, as finally worded, represents a compromise between those who favoured the adoption of rules for the operation of works stores in order to prevent and eliminate possible abuses and those who questioned the relevance of any attempt to regulate the motives of employers in establishing works stores.<sup>85</sup>

**194.** Article 7, paragraph 1, of the Convention provides that where works stores are established or services operated in connection with an enterprise, workers shall be free from any coercion to use them. This is a provision which may be ensured in practice and which, in the absence of any difficulties, might initially merely be the subject of appropriate supervision. If any difficulties are encountered in a country bound by the Convention, the authorities then have to take the necessary steps for their removal. In contrast, Article 7, paragraph 2, of the Convention is not self-executing and requires the adoption of appropriate measures respecting prices and the financial basis of works stores and services in cases where, as a result of material circumstances (the fact that the enterprise is isolated, and the absence within a reasonable distance of stores other than works stores), it is impossible for workers to have access to other shops or services. The provision therefore leaves a considerable measure of discretion to the competent authorities in determining the need for and nature of any special action.

**195.** As regards national law and practice, certain countries have abolished works stores operated by employers for the sale of commodities to workers, probably on account of the risk of abuse. In *France*,<sup>86</sup> for instance,

<sup>84</sup> A fourth condition requiring the association of workers' representatives in the administration of works stores elicited a lower measure of agreement and was removed from the proposed text of a Convention; see ILC, 31st Session, 1948, Report VI(c)(2), p. 74.

<sup>85</sup> See ILC, 31st Session, 1948, *Record of Proceedings*, p. 461, and ILC, 32nd Session, 1949, *Record of Proceedings*, pp. 506-507. Paragraph 9 of the Recommendation was criticized on the grounds that it introduced a political element which was undesirable, and also that the administration of such services related more to industrial relations than to the protection of wages. However, the Paragraph was finally adopted in the form proposed by the Office; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 464, and ILC, 32nd Session, 1949, *Record of Proceedings*, pp. 514-515.

<sup>86</sup> (1), ss. L.148-1, L.148-2. The only exception concerns works stores operated by the national railway company (SNCF) subject to the following conditions: (i) workers may not be compelled to use the stores; (ii) no financial profit accrues to the employer; (iii) the stores are

employers are formally forbidden from establishing any store in the enterprise for the purpose of selling food or goods of any kind directly or indirectly to workers or their families. In *Belgium*,<sup>87</sup> the law in principle forbids the sale of merchandise or the provision of services to workers, except for the sale of products manufactured by the enterprise, meals and drinks, medical care and items needed for the execution of the work. In *Malaysia*,<sup>88</sup> following a recent amendment to the Employment Act, the provisions regulating the establishment and operation of works stores have now been repealed. Other countries, such as *Barbados*, *Cuba*, *Dominica*, *Hungary*, *Lebanon*, *Malta* and the United Kingdom (Guernsey), report that works stores do not exist. Similarly, the Government of the *Dominican Republic* has reported that works stores no longer exist and those previously established in sugar plantations have now been abolished.

**196.** In contrast, a large number of countries prefer to regulate the establishment and operation of works stores by law, rather than to prohibit them altogether, on the basis that under certain circumstances such stores provide a convenient service to workers and their families. In most cases, works stores are specifically authorized by legislation provided that: (i) workers are not obliged to obtain their supplies there; (ii) goods are sold for immediate cash payment and without profit; (iii) the accounts of the company store are kept entirely separate and are subject to inspection by a supervisory committee elected by the workers; (iv) neither alcoholic drinks or spirits are offered for sale. This is the situation, for instance, in *Congo*,<sup>89</sup> *Gabon*<sup>90</sup> and *Madagascar*.<sup>91</sup> In *Benin*,<sup>92</sup> in addition to the above conditions, the law requires the workers to be associated in the establishment and administration of the works store and the sale of commodities to be practised according to conditions agreed upon by the parties.

**197.** Furthermore, in *Mexico*,<sup>93</sup> shops and stores selling clothing, food and household articles may be set up by agreement between the workers and the

managed by joint committees composed of at least one-third of elected representatives of the employees; and (iv) the personnel is consulted once every five years on the continuation of the operation of the stores.

<sup>87</sup> (6), s. 3.

<sup>88</sup> (1), s. 30.

<sup>89</sup> (1), s. 103. This is also the case in *Burkina Faso* (1), s. 135; *Cameroon* (1), s. 78; *Central African Republic* (1), s. 115; *Chad* (1), s. 279; *Comoros* (1), s. 115; *Côte d'Ivoire* (1), s. 27.1; *Democratic Republic of the Congo* (1), s. 97; *Djibouti* (1), s. 110; *Guinea* (1), s. 234; *Mauritania* (1), s. 108; *Niger* (1), s. 126; *Rwanda* (1), s. 115; *Senegal* (1), s. L.133; *Togo* (1), s. 106.

<sup>90</sup> (1), s. 163. Under the terms of the new Labour Code of 1994, the sale of goods in works stores must *preferably* be made in exchange for cash and without profit, rather than *exclusively* in exchange for cash and without profit, as required under the former Code.

<sup>91</sup> (1), s. 84; (3), ss. 2, 3, 4. The law expressly prohibits the sale of goods on credit for a total sum exceeding one-fourth of the worker's salary.

<sup>92</sup> (1), s. 235.

<sup>93</sup> (1), s. 123A-XXVII(e); (2), s. 103.

employers in accordance with the following rules: (i) the worker shall be free to purchase or abstain from purchasing goods, without compulsion; (ii) the selling prices of the goods shall be fixed by agreement between the workers and the employers, and shall in no case exceed official prices or, where no official price is fixed, current market rates; (iii) any change in prices shall be subject to the stipulation laid down in the preceding clause; (iv) the agreement shall stipulate workers' share in the management and supervision of the shop or store. In *Venezuela*,<sup>94</sup> works stores may be established only where workers have no access to stores well-supplied and with reasonable prices; the workers must be free to make use of these stores if they so wish; the conditions for the sale of goods and the prices must be adequately advertised. In addition, the price list must be submitted in advance to the trade union for its comments, while the labour inspectorate together with the trade union must ensure that the goods offered are of good quality and prices do not exceed the cost prices, including transport and administration expenses. In *Spain*,<sup>95</sup> the operation of company stores is subject to the following conditions: workers are not obliged to obtain their supplies therein; goods are sold at cost prices; workers' representatives may participate in the administration of the company stores; sufficient publicity must be given to the selling conditions; regular reporting is required to the competent authorities.

**198.** In *Ecuador*,<sup>96</sup> in the case of factories or other enterprises employing ten or more workers, employers are obliged to set up shops for the sale of consumer goods at cost price to the workers and their families. Similarly, in *Turkey*,<sup>97</sup> the legislation provides that employers may be required to set up company stores for the sale of basic necessities such as food, drink, clothing and fuel to workers if the regional directorate of labour considers that the opening of such a store would benefit the workers and that no similar store is available at worksites remote from any city or town. The labour legislation also provides that workers may not be compelled to make purchases at company stores, while the Labour Ministry regulates the type and quality of the items to be sold and exercises appropriate control in order to ensure fair pricing and prevent profit-seeking.

<sup>94</sup> (1), s. 166. See also *Paraguay* (1), ss. 176, 241. Similarly, in *Morocco* (5), ss. 3, 5, 8, the law authorizes the establishment of works stores only in remote construction sites, agricultural undertakings or industrial mines provided that: workers are not obliged to obtain their supplies therein; goods are sold without profit; no alcoholic drinks are offered for sale; and all documents are made available for inspection.

<sup>95</sup> (2), ss. 1, 4, 6, 15, 18; (3), ss. 1, 4, 6, 11 to 16, 23, 28. It should be noted that certain autonomous communities (*comunidades autónomas*) have been granted the competence to regulate the operation of company stores. Similarly, in *Guinea-Bissau* (1), s. 109, company stores must operate without profit and exercise fair pricing not in excess of current market prices.

<sup>96</sup> (2), s. 42(6).

<sup>97</sup> (1), s. 22.

**199.** In certain countries, such as *Botswana*,<sup>98</sup> *Colombia*<sup>99</sup> and *Nigeria*,<sup>100</sup> the only condition prescribed in national laws and regulations is that, where an employer is authorized or otherwise entitled to establish a shop for the sale of provisions to workers, no worker may be compelled by any contract or agreement, written or oral, to purchase provisions at any shop so established. Similarly, in the *Philippines*,<sup>101</sup> an employer is forbidden to force, compel or oblige employees to make use of any store or services, while in *Singapore*,<sup>102</sup> where an employer establishes a shop or a canteen for the sale of foodstuffs, provisions, meals or refreshments, no worker may be compelled by any contract of service to purchase any goods at that shop or canteen and no noxious drugs or intoxicating liquor may be sold at any such shop or canteen.

**200.** In other countries, such as *Bahrain*<sup>103</sup> and *Yemen*,<sup>104</sup> the law refers only indirectly to works stores by providing that no worker may be required to buy foodstuffs or other articles from any particular establishment, or those produced by the employer. In *Sri Lanka*,<sup>105</sup> the law provides for detailed records to be kept by employers for all deductions made in respect of articles sold to employees, and also requires that the prices charged do not exceed the maximum prices fixed for such articles under any law in force, without explicitly stating, however, that workers may not be compelled to buy goods kept for sale by the employer. Similarly, in *Austria*,<sup>106</sup> *Netherlands*<sup>107</sup> and *Suriname*,<sup>108</sup> the law prohibits any agreement between the employer and the worker whereby the

<sup>98</sup> (1), s. 87(1). This is also the case in *Ghana* (1), s. 56; *Swaziland* (1), s. 51(1); *United Kingdom: Jersey* (17), s. 7; *United Republic of Tanzania* (1), s. 67(1); *Zambia* (1), s. 49(2).

<sup>99</sup> (1), ss. 59(2), 137.

<sup>100</sup> (1), s. 6(1).

<sup>101</sup> (1), s. 112. In *Libyan Arab Jamahiriya* (1), s. 35, an employer may not compel workers to purchase food or other commodities manufactured by him or from any company store or designated establishment.

<sup>102</sup> (1), s. 60(1). In *Seychelles* (1), s. 34(2), the Employment Act stipulates that an employer having a shop, store or place for the sale of commodities to the workers of the employer may not directly or indirectly bind a worker to make use of any such shop, store or place.

<sup>103</sup> (1), s. 73. See also *Egypt* (1), s. 39; *Kuwait* (1), s. 30; *Oman* (1), s. 57; *Qatar* (1), s. 32; *Syrian Arab Republic* (1), s. 50; *United Arab Emirates* (1), s. 59.

<sup>104</sup> (1), s. 62.

<sup>105</sup> (4), s. 21(1)(a); (5), s. 2(1)(f).

<sup>106</sup> (9), s. 78(4). See also *Bahamas* (1), s. 65 and *Guyana* (1), s. 20.

<sup>107</sup> (1), s. 1637S. According to the Government's earlier reports, it is unnecessary to enact specific legislation on works stores, especially since the situation foreseen in Article 7, paragraph 2, of the Convention is unthinkable in the national context.

<sup>108</sup> (1), s. 1613S. In the past, the Government indicated that there was only one company store in the country and therefore that the introduction of statutory regulations at that stage was considered premature; see ILC, 53rd Session, 1969, *Record of Proceedings*, p. 612.

worker is required to purchase goods at a particular shop, but lays down no specific rules regarding the establishment and operation of works stores.

**201.** In certain countries, the operation of works stores is not subject to any legal regulation. For example, the Government of the *Republic of Moldova* has reported that, where works stores exist, workers are not obliged to make use of them and that their prices do not exceed market prices, and therefore asserts that there is no need for specific regulations regarding works stores. In *Kyrgyzstan*, according to the information supplied by the Government, workers' supply departments (ORS) continue to function in some sectors and take a certain percentage of profit, while in some remote places, even though the prices charged are higher than in towns and villages elsewhere, workers are obliged to use their services in the absence of other sources of supply. In the *Russian Federation*, according to the Government's report, the number of enterprises with workers' supply departments is diminishing and those operating today are not covered by any specific legislation. The Government of *Belarus* has reported that, despite the absence of legal regulations in this area, works stores operate only for the benefit of workers and that the sale of goods is carried out at prices generally lower than the prices in public, cooperative or private commerce. Similarly, the Government of *Nicaragua* has reported that, while there is no provision in the Labour Code dealing with works stores, in practice works stores are established through collective agreements to offer basic products at low prices.

**202.** Also, in *Italy*,<sup>109</sup> there is no specific legislative provision for protecting workers against any pressure exercised by the employer to induce them to make use of company stores, but the Government has taken the view that there is no need for special protection, since company stores are managed as cooperatives and administered by the workers themselves. Similarly, the Government of *Greece*<sup>110</sup> has indicated that, despite the absence of specific legislation on this point, in practice the goods in employers' shops are sold at low prices and that the labour inspection had not revealed any particular problems in this respect. In the Government's opinion, the situation does not call for any further action, since all the provisions of the Convention are directly

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<sup>109</sup> The practice concerning works stores in *Italy* has been examined in the past by the Conference Committee on the Application of Conventions and Recommendations. While the Government indicated that no company stores were set up with a view to making a profit and that in practice it was impossible for the employer to exploit workers, mention was also made of the need to adopt special legislative measures to protect workers against the risk of being compelled to spend part of their wages in shops run by their employers; see ILC, 38th Session, 1955, *Record of Proceedings*, pp. 610-611.

<sup>110</sup> The Committee has been pointing out for many years that Article 7 is not self-executing, but requires the competent authorities to take appropriate measures for its implementation; see ILC, 61st Session, 1976, *Record of Proceedings*, p. 213. See also RCE 2002, 330; RCE 1996, 179; RCE 1977, 176.

applicable by virtue of the Constitution, which provides that ratified Conventions are an integral part of domestic law and prevail over any contrary provisions of the law.

**203.** Specific provisions concerning works stores are also lacking in the labour legislation of *Argentina, Cyprus,*<sup>111</sup> *Czech Republic, Iraq, Mauritius, Sudan* and *Uganda*. Nor does the issue appear to be the subject of legislative enactments or regulatory controls in some member States which are not bound by the Convention, such as *Australia, China, Croatia, India, Japan, Jordan, New Zealand, Slovenia, Switzerland, Thailand, United Kingdom* and *Viet Nam*.

**204.** Few countries give full legislative effect to both paragraphs of Article 7 of the Convention by regulating both the operation of works stores in general and adopting specific provisions covering situations in which access to other stores is not possible. In *Israel*,<sup>112</sup> for instance, while setting out the general principle that an employer may not require employees to buy any commodities from him or from anyone connected with him, the law further specifies that where any commodities required by employees and which they are unable to obtain other than at their place of work, are supplied to them by their employer, such commodities must be supplied at a fair price not involving any profit or, if they are supplied by an outsider, they must be supplied at a fair price. Similar regulations exist in *Brazil*,<sup>113</sup> *Paraguay*<sup>114</sup> and *Slovakia*,<sup>115</sup> where an employer is in principle forbidden to force an employee to make use of any commercial facilities established within the premises of the enterprise for the sale of goods or for the provision of services; in the event that the enterprise is in a remote location and it is impossible for the employee to use another commercial facility, an employer has to ensure that the sale of goods is not used for generating profit or that goods are offered at average market prices.

**205.** In some countries, such as the *Democratic Republic of the Congo*,<sup>116</sup> the legislation specifically provides that prices should be fixed at fair and reasonable levels on a non-profit basis and taking into account the workers' interests. In *Swaziland*,<sup>117</sup> the law specifies that goods or services may only be offered to employees at market prices at the most. Similarly, the Government of Indonesia has reported that in company facilities and stores established to meet the workers' daily needs, goods may not be sold at prices higher than minimum

<sup>111</sup> The Government has taken the position that this Article is of limited application in view of the small number of works stores existing in the country and the fact that the workers' organizations are satisfied that there have been no abuses in this regard.

<sup>112</sup> (1), s. 4(a), (b).

<sup>113</sup> (2), s. 462(2), (3).

<sup>114</sup> (1), s. 241.

<sup>115</sup> (1), s. 127(4).

<sup>116</sup> (1), s. 97.

<sup>117</sup> (1), s. 51(2).

market prices. In other countries, such as *Benin*,<sup>118</sup> *Guinea*<sup>119</sup> and *Togo*,<sup>120</sup> the price of all goods offered for sale must be posted in legible writing or print.

**206.** In many countries, the opening of a works store is subject to the prior approval of the Minister of Labour upon the recommendation of the labour inspection services. This is the case, for instance, in *Côte d'Ivoire*,<sup>121</sup> *Democratic Republic of the Congo*<sup>122</sup> and *Mauritania*.<sup>123</sup> In *Benin*<sup>124</sup> and *Senegal*,<sup>125</sup> the authorization is delivered by the Labour Inspector, while in *Cameroon*,<sup>126</sup> the law requires the filing of a simple declaration with the local Labour Inspector. In most countries, the lawful operation of a company store is monitored by the labour inspection services which may, if any irregularity or abuse is found, order the provisional or permanent closure of the store.

**207.** Only a few countries have legislative provisions ensuring arrangements for the participation of workers' representatives in the management of works stores, in accordance with the terms of Paragraph 9 of the Recommendation. In *Benin*<sup>127</sup> and *Spain*,<sup>128</sup> for example, one of the conditions laid down by law for the lawful operation of a company store is that the workers are associated with its establishment and administration. In many countries, the law provides that the accounts of works stores must be placed under the oversight of supervisory committees elected by the workers. This is the position in *Burkina Faso*, *Cameroon*, *Central African Republic*, *Chad*, *Comoros*, *Côte d'Ivoire*, *Djibouti*, *Guinea*, *Madagascar*, *Mauritania*, *Niger*, *Rwanda*, *Senegal* and *Togo*. In *Israel*,<sup>129</sup> the law provides that the prices at which commodities are supplied to employees, in circumstances where there is no other possibility for the procurement of such commodities, have to be fixed with the consent of the

<sup>118</sup> (1), s. 235. See also *Burkina Faso* (1), s. 135; *Central African Republic* (1), s. 115; *Chad* (1), s. 279; *Comoros* (1), s. 115; *Congo* (1), s. 103; *Côte d'Ivoire* (1), s. 27.1; *Democratic Republic of the Congo* (1), s. 98; *Djibouti* (1), s. 110; *Gabon* (1), s. 163; *Madagascar* (3), s. 3; *Mauritania* (1), s. 108; *Niger* (1), s. 126; *Rwanda* (1), s. 115; *Senegal* (1), s. L.133.

<sup>119</sup> (1), s. 234.

<sup>120</sup> (1), s. 106.

<sup>121</sup> (1), s. 28.1. This is also the case in *Burkina Faso* (1), s. 136; *Central African Republic* (1), s. 116; *Chad* (1), s. 280; *Comoros* (1), s. 116; *Congo* (1), s. 104; *Djibouti* (1), s. 111; *Gabon* (1), s. 164; *Guinea* (1), s. 235; *Madagascar* (1), s. 84; (3), s. 1; *Niger* (1), s. 127; *Nigeria* (1), s. 6(1); *Togo* (1), s. 107.

<sup>122</sup> (1), s. 99.

<sup>123</sup> (1), s. 109.

<sup>124</sup> (1), s. 236.

<sup>125</sup> (1), s. L.134.

<sup>126</sup> (1), s. 79.

<sup>127</sup> (1), s. 235.

<sup>128</sup> (1), s. 64(10); (2), ss. 4(e), 10; (3), ss. 4(e), 11, 13 to 16.

<sup>129</sup> (1), s. 4(b).

employees' committee in the enterprise concerned, while in *Mexico*,<sup>130</sup> the prices must be mutually agreed upon between the employers and workers and must not exceed official or current market prices. In *Gabon*, workers' representatives are entitled to inspect the store's accounts on a quarterly basis. Finally, the Government of *Uruguay* reports that, where works stores exist, their operation is controlled by joint committees.

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**208.** By way of conclusion, the Committee notes that the principle of the freedom of workers to dispose of their wages, which has in the past been the subject of lengthy struggle, especially in connection with the compulsory use of works stores run by the employer, would today appear to enjoy general acceptance. Indeed, in practically all countries, the payment of wages directly to the worker concerned, unless otherwise agreed, the prohibition against limiting the freedom of workers to dispose of their wages and the right of workers to make use of company stores free of coercion, are specifically set out in national laws and regulations.

**209.** With respect to the principle of the direct payment of wages to workers, the Committee wishes to emphasize once again the great measure of flexibility afforded by Article 5 of the Convention, since exceptions to this principle are permitted by laws, regulations, collective agreements, arbitration awards, or with the agreement of the worker, with the result that this provision therefore allows for the possibility of the payment of wages by such modern means as electronic bank transfer.

**210.** With regard to the application of Article 6 of the Convention, the Committee takes the view that nothing short of an explicit legislative provision setting forth a general prohibition upon employers from limiting the freedom of workers to dispose of their wages in any form and manner, directly or indirectly, and not simply in respect of the use of company stores, can be regarded as giving full effect to the requirements of the Convention. Other legislative measures, such as the exhaustive enumeration of authorized deductions, combined with an explicit provision to the effect that any deductions other than those explicitly permitted by law are unlawful and without effect, may be deemed to give only partial effect to the obligation laid down in Article 6 of the Convention. The Committee need hardly reiterate the serious consequences for the workers concerned that the non-observance of the principles laid down in Articles 5 and 6 of the Convention might have. The system of "deferred pay" sometimes applied in relation to migrant workers, as well as the system of "compulsory remittance" occasionally imposed on workers employed abroad, serve as vivid reminders of the real risk of abuse to which the most vulnerable

<sup>130</sup> (2), s. 103(II).



categories of workers may be subjected, and of the need to forcefully reaffirm the inalienable character of the right of workers to receive their wages directly and in full, and to spend them as they please.

**211.** Finally, the practice of operating works stores within the enterprise for the sale of goods to the workers would not appear to be as current today as it may have been when the Convention was adopted. However, where such arrangements still exist, specific legal provisions have in most cases been adopted to guarantee the right of workers to use these arrangements at their sole discretion. As regards the regulation of works stores respecting the prices of the goods offered for sale and particularly the non-profit-making nature of such stores, as required by Article 7, paragraph 2, of the Convention, it appears to be much less frequent in national law and practice.

## CHAPTER IV

### DEDUCTIONS FROM WAGES AND THE ATTACHMENT AND ASSIGNMENT OF WAGES

**212.** Article 8 of the Convention lays down the principle that deductions from wages may only be permitted subject to the conditions and within the limits prescribed by national laws, or fixed by collective agreement or arbitration award, and that workers should be kept properly informed of such conditions and limits. In addition, Paragraphs 1 to 3 of the Recommendation offer some guidance concerning the need to establish overall limits to permissible deductions, as well as specifying the conditions applicable to deductions for the loss or damage, or supply of tools. Article 9 singles out a particular type of deduction, that is any direct or indirect payment to the employer, his representative or an intermediary for the purpose of obtaining or retaining employment, and requires the outright prohibition of such deductions. Article 10 requires the adoption of national laws and regulations setting out the manner and the limits within which wages may be attached or assigned, and which protect wages against attachment or assignment to the extent deemed necessary for the maintenance of the workers and their families. The Committee will consider each of the above provisions in turn.

#### **1. Deductions from wages**

##### **1.1. Definition and scope of wage deductions**

**213.** Employed persons rarely receive the full amount of the remuneration to which they are nominally entitled. Their wages are normally subject to various deductions, which represent the difference between the gross amount of their earnings and the net amount they actually receive. These deductions have to be regulated in order to protect workers from arbitrary and unfair deductions, which would amount, in effect, to an unjust decrease in their remuneration. The Convention does not provide any definition of the term “deduction”. Although the advisability of drafting such a definition was briefly considered during the preparatory work preceding the second Conference discussion, it was finally concluded that since deductions would be regulated by law, agreement or award,

these texts could also be expected to provide an appropriate definition of the term.<sup>1</sup>

**214.** The Committee believes that Article 8 of the Convention applies to all kinds of deductions.<sup>2</sup> It is indicative in this respect that Article 8, paragraph 1, refers to “deductions from wages” in general while Paragraph 7(b) of the Recommendation requires workers to be informed of “any deduction which may have been made”. The Convention does not list, either selectively or exhaustively, any specific types of deductions from wages, nor is it worded in a way that might suggest that it was meant to cover certain types of deductions and not others.

**215.** Another question that arises is whether Article 8 refers to deductions made from gross or net wages. The Committee tends to believe that what is meant here is gross rather than net remuneration. This reading is also supported by Paragraph 7 of the Recommendation, according to which workers “should be informed” of “(a) the gross amount of wages earned; (b) any deduction which may have been made, including the reasons therefor and the amount thereof; and (c) the net amount of wages due”. In addition, the definition of “wages” in Article 1 of the Convention, while not referring explicitly to gross remuneration, is worded in such general terms that covers not only take-home pay, but also earnings and benefits in a broad sense, including employer’s contributions to health insurance, pension plans, etc. Furthermore, deductions in practice affect gross remuneration, as they often take the form of deductions at source. The situation is different with regard to the attachment of wages which mostly concerns net remuneration, i.e. remuneration from which deductions have already been taken.

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<sup>1</sup> According to a suggested definition, deductions should extend to and include any payment made by the worker to the employer or his agent; otherwise the worker would run the risk of being given the full wages, but of being compelled to pay back immediately a portion of the wages in deductions; see ILC, 32nd Session, 1949, Report VII(2), pp. 5, 17. From a purely linguistic point of view, it is of some interest that in other ILO instruments, the term “deductions from wages” has not always been rendered in French as “*retenues sur les salaires*”. For instance, in the Forced Labour Convention, 1930 (No. 29), the term “deduction” is translated as “*dédution*”, whereas in the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), the term used is “*prélèvement*”.

<sup>2</sup> It may be recalled, in this respect, that at the second Conference discussion it was proposed to narrow the scope of Article 8 to cover only deductions “other than those for the benefit of the worker made on his express authority”. The Conference Committee, however, rejected this proposal and adopted the text in the form submitted by the Office; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 507.

## 1.2. Conditions governing deductions from wages

### 1.2.1. Authorization by national laws or regulations, collective agreement or arbitration award

**216.** Article 8, paragraph 1, of the Convention provides that deductions from wages may be effected only under conditions and to the extent prescribed by laws, regulations, collective agreements or arbitration awards.<sup>3</sup> This provision presupposes the existence of a general rule limiting wage deductions to those remaining within the limits prescribed by laws, regulations, collective agreements or arbitration awards, and the application, in accordance with Article 15(c) of the Convention, of “adequate penalties or other appropriate remedies” for any contravention of that general rule. In the Committee’s view, adequate protection in respect of wage deductions therefore implies the regulation of the legal conditions and limits of permissible deductions, which may also be supplemented by an appropriate legislative provision prohibiting deductions, except as authorized by one of the instruments referred to in Article 8, paragraph 1, of the Convention. The Committee recalls that this Article of the Convention is considered as fully applied by those States whose national laws or regulations enumerate the types of deductions authorized, if any, and also prohibit any other deductions. The Committee has frequently commented on the failure to adopt laws or regulations prescribing the conditions and the extent to which deductions from wages may be made.<sup>4</sup> In other instances, the Committee has pointed out that, in addition to the authorization of certain types of deductions by law, detailed conditions and specific limits upon deductions still need to be set.<sup>5</sup>

**217.** Attention should also be drawn to another point which has often been the subject of the Committee’s comments, namely the conformity of deductions provided for in individual labour agreements and deductions made with the worker’s written consent with the requirements of the Convention. In this connection, it should be recalled that Article 8, paragraph 1, of the Convention (much like Article 4, paragraph 1, regulating payments in kind) makes exclusive

<sup>3</sup> In its preliminary law and practice report, the Office concluded that, in view of the diversity of national legislation in this regard, it was necessary to leave to national action the details of the conditions under which and the extent to which deductions might be legally authorized; see ILC, 31st Session, 1948, Report VI(c)(1), p. 25. The text initially proposed by the Office therefore made reference only to national laws and regulations. At the first Conference discussion, upon the proposal of the Worker members, a reference was added to collective agreements and arbitration awards; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 462.

<sup>4</sup> For instance, the Committee has addressed a direct request in this sense to *Yemen* in 1992.

<sup>5</sup> For instance, the Committee has addressed a direct request in this sense to the *Dominican Republic* in 2000.

reference to national laws or regulations, collective agreements and arbitration awards as being the only valid legal bases for effecting deductions from wages. In both cases, the aim is clearly to exclude “private” arrangements which might involve unlawful or abusive deductions, or unsolicited payments in kind, to the detriment of the worker’s earnings. In the Committee’s opinion, provisions of national legislation which permit deductions by virtue of individual agreements or consent are not therefore compatible with Article 8, paragraph 1, of the Convention.<sup>6</sup>

#### 4.1. Permissible wage deductions under the European Social Charter

Under Article 4, paragraph 5 [of the European Social Charter], States undertake to “permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards”. [...] The underlying principle of this provision is that the worker’s wage should be subject to deductions only in circumstances, which are well-defined in a legal instrument (covering the basis and the procedure) and subject to the limits specified therein. [...] National legislation which appears to permit the parties to the employment contract the scope to agree on deductions invariably attracts closer scrutiny. In its most recent supervision of this provision, the Committee [of Independent Experts] raised questions over the possibility of deductions being permitted with the written consent of the worker, as laid down in the relevant national regulations. It is submitted that this degree of latitude is not compatible with the Charter. [...] When considering the conditions under which deductions may be made to wages, the Committee looks not just to the situations in which this arises, but also to the procedures involved. It takes note of any duty to consult worker representatives, the right of the worker to make his case, and seeks information on appeal to the courts. This is quite in keeping with the principle behind this provision, i.e. that deductions to wages should only be permissible in accordance with a higher legal norm than the employment contract. [...] At the same time, the Committee considers the limits laid down in national law for wage deductions. National rules on this point vary, choosing either to protect a fraction of the wage from deductions or stipulating a minimum sum which must be set aside for the worker. In assessing these limits, the Committee’s concern is that the worker be assured of an income which assures subsistence for them and their dependants.

Source: *Conditions of employment in the European Social Charter*, Council of Europe, 1999, pp. 80-83.

<sup>6</sup> For instance, the Committee has addressed direct requests in this sense to *Azerbaijan*, *Norway*, *Poland* and *Tajikistan* in 2001, to *Bulgaria* in 1995, and to *Sudan* in 1987. In the United Kingdom (1), s. 13(1), deductions are permissible when authorized by virtue of a relevant provision of the worker’s contract or when the worker has previously signified in writing his agreement or consent to the making of the deduction. See also United Kingdom: Isle of Man (14), s. 13(1)(a). Similarly, in the Australian State of Western Australia (10), s. 17D, an employer may deduct from an employee’s pay an amount the employer is authorized to deduct and pay on behalf of the employee under the contract of employment.

**218.** In addition, in some countries, such as *Cameroon*,<sup>7</sup> *Côte d'Ivoire*<sup>8</sup> and *Senegal*,<sup>9</sup> deductions from wages may be made for deposits (“*consignations*”) set out in individual agreements. In this regard, the Committee has consistently recalled that provisions in national legislation authorizing deductions from wages by virtue of individual agreements or consent do not offer the level of protection required by the Convention and it has urged governments to adopt suitable measures to specify the types and extent of the deductions permitted under contracts of employment.<sup>10</sup>

**219.** Permissible deductions are exhaustively enumerated in the laws of a considerable number of countries, including *Bulgaria*,<sup>11</sup> *China*,<sup>12</sup> *Cuba*,<sup>13</sup> *Ecuador*,<sup>14</sup> *Islamic Republic of Iran*,<sup>15</sup> *Mexico*,<sup>16</sup> *Russian Federation*<sup>17</sup> and *Zambia*.<sup>18</sup> Among the countries where the legislation lists all the authorized deductions, many also provide that any deductions except those specifically authorized are formally prohibited. This is the case, for instance, in *Botswana*,<sup>19</sup>

<sup>7</sup> (1), s. 75(1). This is also the case in *Benin* (1), s. 216(1); *Burkina Faso* (1), s. 128(1); *Central African Republic* (1), s. 112(1); *Congo* (1), s. 100(1); *Djibouti* (1), s. 107; *Guinea* (1), s. 231(1); *Madagascar* (1), s. 79; *Niger* (1), s. 170(1); *Togo* (1), s. 103(1).

<sup>8</sup> (1), s. L.34.1(1).

<sup>9</sup> (1), s. L.130(1).

<sup>10</sup> For instance, the Committee has addressed direct requests in this sense to *Burkina Faso*, *Cameroon*, *Madagascar*, *Niger* and *Senegal* in 2001.

<sup>11</sup> (1), s. 272(1). This is also the case in *Azerbaijan* (1), ss. 175, 176; *Bahamas* (1), ss. 5(2), 7; (4), s. 14(1); *Barbados* (1), ss. 8, 9, 19; *Belarus* (1), s. 107; *Chile* (1), s. 58; *Czech Republic* (1), ss. 82, 87(1), 108(2), 114, 119, 126; *Dominica* (1), ss. 8, 9, 19; *Dominican Republic* (1), s. 201; *Estonia* (2), ss. 36, 37(1); *Guyana* (1), s. 23; *Kenya* (1), s. 6(1); (2), s. 14(1); *Panama* (1), s. 161; *Poland* (1), ss. 129(1), 132(1), (2); *Slovakia* (1), s. 131; *Swaziland* (1), ss. 56, 57; *Ukraine* (1), s. 127.

<sup>12</sup> (1), ss. 15, 16.

<sup>13</sup> (1), s. 125.

<sup>14</sup> (2), ss. 42(6), 42(21), 85, 90.

<sup>15</sup> (1), s. 45.

<sup>16</sup> (2), s. 110.

<sup>17</sup> (1), ss. 137, 236.

<sup>18</sup> (1), ss. 45, 46.

<sup>19</sup> (1), s. 80(1). This is also the case in *Benin* (1), s. 227(1); *Burkina Faso* (1), ss. 128(1), 130(1); *Cameroon* (1), s. 75(1), (3); *Cape Verde* (1), s. 121(1), (2); *Central African Republic* (1), ss. 112(1), 114(2); *Chad* (1), ss. 276(1), 278(1); *Comoros* (1), ss. 112(2), 114(1); *Congo* (1), ss. 100(1), 102(1); *Côte d'Ivoire* (1), ss. L.34.1(1), L.34.3(1); *Djibouti* (1), ss. 107, 109(1); *Gabon* (1), ss. 161(1), 162(2); *Guinea-Bissau* (1), s. 23(h); *Iraq* (1), s. 4(3); *Israel* (1), s. 25; *Kyrgyzstan* (1), s. 242(2); *Madagascar* (1), ss. 79, 80(1); *Malaysia* (1), s. 24(1); *Mali* (1), s. L.121; *Malta* (1), s. 23(1); *Mauritania* (1), s. 107; *Mauritius* (1), ss. 12, 13; *Republic of Moldova* (1), s. 132(1); *Niger* (1), ss. 170(1), 172(1); *Nigeria* (1), ss. 4, 5; *Philippines* (1), ss. 113, 116; *Romania* (1),

*Guinea*,<sup>20</sup> *Norway*,<sup>21</sup> *Slovenia*<sup>22</sup> and *Sri Lanka*.<sup>23</sup> Similarly, in *Argentina*<sup>24</sup> and *Colombia*,<sup>25</sup> the law enumerates both permissible and prohibited deductions. In contrast, in some countries, the national legislation prescribes only the conditions applying to certain deductions, without indicating whether these are the only permissible forms of deductions from wages. This is the situation, for instance, in the *Democratic Republic of the Congo*,<sup>26</sup> where provision is made only for deductions for loss or damage to the property of the employer, and *Turkey*,<sup>27</sup> where the law appears to regulate only deposits for damage claims and fines.

**220.** In certain countries, deductions from wages are also permitted by collective agreements. This is the case, for instance, in *Azerbaijan*,<sup>28</sup> *Brazil*<sup>29</sup> and *Malta*.<sup>30</sup> With regard to the authorization of deductions by collective agreements, the Convention appears to make no distinction between collective agreements which can be legally enforced and those which cannot. However, in cases where the conditions and extent of deductions from wages are fixed by collective agreement, it must be ensured that all workers are covered. This requirement is fulfilled, for example, when national laws and regulations fix the conditions and extent of deductions, while collective agreements only specify possible additional deductions.

s. 87(3); Rwanda (1), ss. 109 to 113; *Senegal* (1), s. L.132; *Sudan* (1), s. 35(8); *Togo* (1), ss. 103(1), 105(1); *Uganda* (1), s. 31; United Kingdom: *Montserrat* (21), ss. 8, 9, 20.

<sup>20</sup> (1), s. 233.

<sup>21</sup> (1), s. 55(3).

<sup>22</sup> (1), s. 136(1).

<sup>23</sup> (1), s. 19(1)(a); (5), s. 2(1); (2), s. 2(a); (4), s. 18.

<sup>24</sup> (1), ss. 131, 132.

<sup>25</sup> (1), ss. 149 to 152.

<sup>26</sup> (1), s. 93(1), (2).

<sup>27</sup> (1), ss. 31, 32. See also *Oman* (1), ss. 35, 58.

<sup>28</sup> (1), s. 175(2)(h). This is also the case in *Chad* (1), s. 276(1); *Gabon* (1), s. 161(1); *Guinea* (1), s. 231(1); *Mali* (1), s. L.122; *Norway* (1), s. 55(3)(d); *Zimbabwe* (4), s. 10; (5), s. 13. Similarly, in *Japan* (2), s. 24(1), partial deduction from wages is permitted in cases where there exists a written agreement with a trade union organized by a majority of the workers at the workplace. Moreover, according to the information supplied by the Government of the Republic of Korea, in the cases where deductions provided by a collective agreement are opposed by individual workers, they are not applied to those opposed. In the Australian states of New South Wales (5), s. 118(2)(b), South Australia (8), s. 68(3)(b), and Western Australia (10), s. 17D, the employer may deduct from the remuneration an amount the employer is authorized to deduct and pay on behalf of the employee under an industrial instrument/award or enterprise agreement.

<sup>29</sup> (1), s. 7(VI).

<sup>30</sup> (1), s. 23(1).

**221.** In this respect, the Committee wishes to draw attention to certain practices which may conflict with the requirements of Article 8 of the Convention. For example, where a certain administrative authority is granted broad discretion to authorize deductions other than those expressly provided for in the national legislation, this tends to nullify the protection afforded by the detailed listing of permissible deductions in the law.<sup>31</sup> Similarly, the waiving of any supervision, whether judicial or administrative, of deductions made by mutual agreement may give rise to serious abuses.<sup>32</sup> Furthermore, where deductions are limited only in respect of minimum wages, for instance, by specifying that minimum wages are to be paid clear of all deductions, the requirements of the Convention are not fully met, since this provision would not apply in cases where minimum wages have not been prescribed or are not applicable.<sup>33</sup>

### **1.2.2. Types of authorized deductions**

**222.** As noted above, the Convention does not contain a list of permissible deductions, as their determination is left to national authorities and the collective bargaining process.<sup>34</sup> Member States therefore enjoy full freedom under the terms of this Article of the Convention when regulating the types of permissible deductions through legislation. Most countries have laws regulating the conditions under which deductions from wages may be made. Deductions are permitted for various reasons, such as the payment of income tax or social security contributions, the settlement of trade union dues or the reimbursement of pay advances and loans. Wage sums may also be withheld in execution of court orders, which are known as attachment, garnishment or distraint orders.

**223.** The only provisions in the ILO instruments under consideration referring to specific types of deductions are found in Paragraphs 2 and 3 of the Recommendation, which deal with deductions from wages for the reimbursement of damages caused by bad or negligent work, or for damage to materials or to the property of the employer, and deductions in payment for the

<sup>31</sup> For instance, the Committee has addressed a direct request in this sense to *Belize* in 1988.

<sup>32</sup> For instance, the Committee has addressed a direct request in this sense to *Gabon* in 1981.

<sup>33</sup> For instance, the Committee has addressed direct requests in this sense to *Sierra Leone* in 1992, *Islamic Republic of Iran* in 1988, and *Nicaragua* in 1980.

<sup>34</sup> The Office had concluded from the outset that the inclusion of regulations concerning particular types of deductions in a comprehensive Convention would give rise to difficulties and had therefore suggested that the international regulations concerning the various circumstances in which different types of deductions should be allowed were considered more suitable for adoption in the form of a Recommendation supplementing a general Convention; see ILC, 31st Session, 1948, Report VI(c)(2), p. 76.



use of materials, tools and equipment supplied by the employer. Another clause regulating deductions in the form of disciplinary fines was initially inserted in the text of the draft Recommendation, but was later omitted in view of the opposition expressed to deductions of this nature. In the following paragraphs, the Committee briefly reviews national law and practice with regard to some of the most common forms of wage deductions, before turning to the specific types of deductions dealt with in the Recommendation. The attachment of wages, which is a particular form of deduction made by virtue of a judicial decision, is addressed in a separate section of this chapter.

#### 1.2.2.1. Common forms of authorized deductions

**224.** In many countries, the national legislation authorizes deductions for mandatory payments to income tax authorities or social security institutions. This is the case, for instance, in *Argentina*,<sup>35</sup> *Bolivia*,<sup>36</sup> *Czech Republic*,<sup>37</sup> *Dominican Republic*,<sup>38</sup> *Norway*,<sup>39</sup> *Philippines*,<sup>40</sup> *Spain*,<sup>41</sup> *Turkey*,<sup>42</sup> *United Kingdom*<sup>43</sup> and the *United States*.<sup>44</sup>

<sup>35</sup> (1), ss. 131, 132(b). This is also the case in *Azerbaijan* (1), s. 175(2)(a); *Belarus* (1), s. 107(1); *Benin* (1), s. 216; *Botswana* (1), s. 81(1)(a)(i); *Bulgaria* (1), s. 272(1)(iii); *Cape Verde* (1), s. 121(2)(a); *Chad* (1), s. 276; *Chile* (1), s. 58; *China* (1), s. 15(1), (2); *Colombia* (1), s. 150; *Democratic Republic of the Congo* (1), s. 95(4); *El Salvador* (2), s. 132; *Estonia* (2), s. 36(1); *Guinea* (1), s. 230; *Guinea-Bissau* (1), s. 106(2)(a); *Israel* (1), s. 25(a)(1), (2); *Luxembourg* (1), s. 6(6); *Mali* (1), s. L.122; *Nicaragua* (3), s. 4; (5), s. 3(3); (6), s. 3(3); *Panama* (1), s. 161(1), (2); *Paraguay* (1), ss. 63(a), 240(c); *Poland* (1), s. 87(1); *Saint Vincent and the Grenadines* (4), s. 21(3); *Senegal* (1), s. L.130(1), (2); *Slovakia* (1), s. 131(1); *Sri Lanka* (2), s. 2(a); *Swaziland* (1), s. 56(1)(a), (b); *Tajikistan* (1), s. 109(1); *Togo* (1), s. 103(1); *Uganda* (1), s. 32(3)(b); *Ukraine* (1), s. 127(1); (2), s. 26(1); *United Kingdom: Isle of Man* (14), s. 13(5)(c); *Virgin Islands* (22), s. C32(a). Similarly, the Governments of Japan, the Republic of Korea and Lithuania have reported that income tax and social insurance premiums are mandatory deductions under relevant income tax legislation.

<sup>36</sup> (2), s. 42.

<sup>37</sup> (1), s. 121(1)(a), (b); (2), s. 12(1)(a); (4), s. 18(1)(b).

<sup>38</sup> (1), s. 201(1); (3), s. 309; (4), s. 62.

<sup>39</sup> (1), s. 55(3)(b).

<sup>40</sup> (1), s. 113(a).

<sup>41</sup> (1), s. 26(4); (4), s. 104(2); (5), s. 82; (6), Annex.

<sup>42</sup> (1), s. 30.

<sup>43</sup> (1), s. 14(3); (2), Schedule 3, s. 3(3)(a), (b).

<sup>44</sup> (2), s. 531.38; *Colorado* (10), s. 8-4-101(7.5)(a); *Massachusetts* (27), s. 150A; *Montana* (33), s. 39-3-101; *Pennsylvania* (46), s. 9.1. In addition, several state laws provide for deductions in respect of medical, surgical or hospital care or service without financial benefit to the employer; see, for instance, *California* (9), s. 224; *Connecticut* (11), s. 31-71e; *Delaware* (13), s. 1107(2); *Kansas* (21), s. 44-319(a); *Kentucky* (22), s. 337.060(1); *Minnesota* (29), s. 181.06(2); *Nevada* (35), s. 608.110; *New Hampshire* (36), s. 275:48(I)(c); *New Jersey* (37), s. 12:55-2.1; *Oregon* (45),

**225.** Certain countries authorize deductions with the worker's consent for the payment of contributions to voluntary provident or pension funds and other similar schemes. This is the case, for example, in *Botswana*,<sup>45</sup> *Dominica*,<sup>46</sup> *Kenya*,<sup>47</sup> *Malaysia*,<sup>48</sup> *Nigeria*,<sup>49</sup> *United States*<sup>50</sup> and *Uruguay*.<sup>51</sup>

**226.** In many countries, trade union fees may be deducted from wages under arrangements made between a workers' organization of which the worker is a member and the employer or an employers' organization of which the employer is a member. This is the situation, for example, in *Argentina*,<sup>52</sup>

s. 652.710; Rhode Island (47), s. 28-14-10(2); Washington (55), s. 49.52.060; West Virginia (57), s. 21-5-1(g).

<sup>45</sup> (1), s. 81(1)(a)(ii). This is also the case in *Argentina* (1), ss. 131, 132(e); *Barbados* (1), s. 19; *Canada: British Columbia* (6), s. 22(1)(b), *Newfoundland and Labrador* (9), s. 36(3)(e), and *Quebec* (16), s. 49; *Dominican Republic* (1), s. 201(5); *Israel* (1), s. 25(a)(5); *Luxembourg* (1), s. 6(3); *Malta* (1), s. 23(3); *Mauritius* (1), s. 13(2); *Uganda* (1), s. 32(1)(b); *United Kingdom: Montserrat* (21), s. 20; *Zambia* (1), s. 45(1)(a). Similarly, in *Saint Vincent and the Grenadines* (2), s. 13(1), deductions may be lawfully made at the request of the worker either for the purpose of a superannuation scheme or a thrift scheme, or for any other purpose in the carrying out of which the employer has no beneficial interest, either directly or indirectly. In *Sri Lanka* (4), s. 18(1); (5), s. 2(1)(b)(i), an employer may deduct from the remuneration of an employee any contribution which the employee desires to make to any pension fund, provident fund, insurance scheme, savings scheme or recreation club, approved in writing by the labour commissioner and operated wholly or in part by the employer.

<sup>46</sup> (1), s. 19.

<sup>47</sup> (1), s. 6(1)(a); (2), s. 14(1)(a).

<sup>48</sup> (1), s. 24(4)(a).

<sup>49</sup> (1), s. 5(2).

<sup>50</sup> (2), s. 531.40(c); *California* (9), s. 224; *Kentucky* (22), s. 337.060(1); *Massachusetts* (27), s. 150A; *Minnesota* (29), s. 181.06(2); *New Jersey* (37), s. 12:55-2.1(a); *New York* (39), s. 193(1)(b); *North Carolina* (41), s. 13-12.0305(c); *Ohio* (43), s. 4113.15(D)(3); *Pennsylvania* (46), s. 9.1; *Rhode Island* (47), s. 28-14-10; *West Virginia* (57), s. 21-5-1(g).

<sup>51</sup> (7), s. 9.

<sup>52</sup> (1), ss. 131, 132(c). This is also the case in *Botswana* (1), s. 81(1)(b)(ii); *Canada* (1), s. 254.1(2)(b), and *British Columbia* (6), s. 22(1)(a); *Chile* (1), s. 58; *Colombia* (1), s. 150; *Costa Rica* (1), s. 69(k); *Dominica* (1), s. 9(1)(c); *Dominican Republic* (1), s. 201(2); *El Salvador* (2), s. 132; *Guatemala* (2), s. 61(i); *Honduras* (2), s. 95(12); *Malaysia* (1), s. 24(3)(a); *Nicaragua* (5), s. 3(5); (6), s. 3(5); *Panama* (1), s. 161(8); *Peru* (9), s. 28; *Philippines* (1), s. 113(b); *Sri Lanka* (5), s. 2(1)(b)(ii); *Uganda* (1), s. 32(1)(a); *Venezuela* (1), ss. 132, 446. In *Cameroon* (1), s. 21, the law provides that such deduction at source is permitted only if the worker has agreed with such procedure by signing a form jointly accepted by the employer and the trade union. The worker's consent may be withdrawn at any time or tacitly renewed, if it is not withdrawn, except in the case of a change in the amount of the contribution. Similarly, in *Nigeria* (1), s. 5(3), a worker in writing may contract out of the system.

*Brazil*,<sup>53</sup> *Ecuador*,<sup>54</sup> *Hungary*,<sup>55</sup> *Mexico*,<sup>56</sup> *Paraguay*,<sup>57</sup> *Senegal*,<sup>58</sup> *Spain*,<sup>59</sup> *Swaziland*<sup>60</sup> and the United States.<sup>61</sup> In *Honduras*<sup>62</sup> and *Venezuela*,<sup>63</sup> the legislation permits deductions, in the form of a “solidarity fee”, from the wages of non-unionized workers who have benefited from a collective agreement concluded by a trade union. Moreover, in certain countries, such as *Colombia*,<sup>64</sup> *Mexico*,<sup>65</sup> *Uruguay*<sup>66</sup> and *Venezuela*,<sup>67</sup> provision is made for deductions for the payment of contributions to cooperative associations and workers’ mutual funds. In *Israel*,<sup>68</sup> supplements to trade union membership fees intended to finance political party activities may also be deducted, unless employees inform the employer in writing of their objection to the payment of such supplements. In the United States,<sup>69</sup> federal and state regulations provide for deductions in respect of contributions to non-profit or charitable organizations.

<sup>53</sup> (2), s. 545.

<sup>54</sup> (2), s. 42(21).

<sup>55</sup> (1), s. 161(4).

<sup>56</sup> (2), s. 110(VI).

<sup>57</sup> (1), ss. 63(a), 240(d).

<sup>58</sup> (1), s. L.130(1), (2).

<sup>59</sup> (7), s. 11.

<sup>60</sup> (1), s. 56(2).

<sup>61</sup> (2), s. 531.40(c); Georgia (15), ss. 34-6-25, 34-6-26; Idaho (17), s. 44-2004; Kansas (21), s. 44-319(b); Kentucky (22), s. 337.060(1); Massachusetts (27), s. 150A; Michigan (28), s. 408.477(1); Minnesota (29), s. 181.06(2); New Jersey (37), s. 12:55-2.1(a); New York (39), s. 193(1)(b); North Carolina (41), s. 13-12.0305(c); Oregon (45), s. 652.610(4); Pennsylvania (46), s. 9.1; Rhode Island (47), ss. 28-14-3, 28-14-10; Utah (52), s. 34-32-1; West Virginia (57), s. 21-5-1(g).

<sup>62</sup> (2), s. 95(12).

<sup>63</sup> (1), s. 446.

<sup>64</sup> (1), s. 150. This is also the case in *Argentina* (1), ss. 131, 132(c); *Costa Rica* (1), s. 69(k); *Guatemala* (2), s. 61(i); *Honduras* (2), s. 95(13); *Panama* (1), s. 161(5); *Paraguay* (1), ss. 63(a), 240(d); *Peru* (11), s. 79; (13), s. 7.

<sup>65</sup> (2), s. 110(IV). In this regard, deductions may not exceed 30 per cent of the amount by which the worker’s remuneration exceeds the minimum wage.

<sup>66</sup> (8), s. 1; (9), s. 1; (10), s. 1. Deductions in this respect may vary from 35 to 55 per cent of the worker’s wages.

<sup>67</sup> (1), s. 132.

<sup>68</sup> (1), s. 25(a)(3), (3a).

<sup>69</sup> (2), s. 531.40(c); Michigan (28), s. 408.477(2); New Jersey (37), s. 12:55-2.1(2)(v); New York (39), s. 193(1)(b); North Carolina (41), s. 13-12.0305(c); Ohio (43), s. 4113.15(D)(3); Oregon (45), s. 652.610(4); Rhode Island (47), s. 28-14-10; West Virginia (57), s. 21-5-1(g).

**227.** Deductions from wages for the reimbursement of pay advances are also very common. The term “pay advance” is understood to mean any amount of wages earned and paid directly to the employee, or to another person at the employee’s written request, in anticipation of the regular period of payment of the wages. This is the position, for example, in *Barbados*,<sup>70</sup> *Brazil*,<sup>71</sup> *Cameroon*,<sup>72</sup> *Ecuador*,<sup>73</sup> *Egypt*,<sup>74</sup> *Islamic Republic of Iran*,<sup>75</sup> *Russian Federation*,<sup>76</sup> *Tunisia*<sup>77</sup> and the United States.<sup>78</sup> In most cases, the national laws and regulations provide either that there may be no interest charged on any sums advanced to a worker, or that prior authorization is needed from a labour authority before interest can be charged on such advances.

**228.** In addition, deductions are frequently permitted for the repayment of loans, credits and other personal debts. Specific provisions to this effect are

<sup>70</sup> (1), s. 9(1)(b). This is also the case in *Argentina* (1), ss. 130, 131, 132(a); *Azerbaijan* (1), s. 175(3); *Belarus* (1), s. 107; *Bulgaria* (1), s. 272(1)(i); *Burkina Faso* (1), s. 128; *Cape Verde* (1), s. 121(2)(f); *Central African Republic* (1), s. 112(1); *Chad* (1), s. 276; *Colombia* (1), ss. 149(1), 151; *Comoros* (1), s. 112(2); *Congo* (1), s. 100(2); *Costa Rica* (1), s. 173; *Côte d’Ivoire* (1), s. 34.1; *Czech Republic* (1), s. 121(1)(c); (2), s. 12(1)(b); (4), s. 18(1)(b); *Djibouti* (1), s. 107; *Dominica* (1), s. 9(1)(b); *Dominican Republic* (1), s. 201(3); *Estonia* (2), s. 36(2); *Gabon* (1), s. 161(1); *Guinea* (1), s. 231; *Guinea-Bissau* (1), s. 106(2)(f); *Guyana* (1), s. 23(g); *Honduras* (2), s. 372; *Hungary* (1), s. 161(2); *Israel* (1), s. 25(a)(7); *Kyrgyzstan* (1), s. 242(3)(i); *Luxembourg* (1), s. 6(5); *Madagascar* (1), s. 79; *Malaysia* (1), s. 24(2)(c), (4)(b); *Mali* (1), s. L.124; *Mauritania* (1), s. 105; *Mauritius* (1), s. 12(3); *Mexico* (2), s. 110(I); *Republic of Moldova* (1), s. 132(1); *Niger* (1), s. 170(1); *Nigeria* (1), s. 4; *Panama* (1), s. 161(3); *Paraguay* (1), ss. 63(a), 240(b), 242; *Poland* (1), s. 87(1)(iii); *Rwanda* (1), s. 111; *Saint Vincent and the Grenadines* (1), s. 3; *Senegal* (1), s. L.130(4), (5); *Slovakia* (1), s. 131(2)(a); *Spain* (6), Annex; *Sri Lanka* (1), s. 19(1)(a); (2), s. 2(a); *Sudan* (1), s. 37(1); *Swaziland* (1), s. 56(1)(d); *Turkey* (1), s. 30; *Uganda* (1), s. 32(4); *Ukraine* (1), s. 127(2)(i); *United Kingdom: Montserrat* (21), s. 9(b); *Virgin Islands* (22), s. C32(b); *Zambia* (1), s. 46(2).

<sup>71</sup> (2), s. 462.

<sup>72</sup> (1), s. 75(1).

<sup>73</sup> (2), s. 90.

<sup>74</sup> (1), s. 40.

<sup>75</sup> (1), s. 45(b).

<sup>76</sup> (1), s. 137(2)(i).

<sup>77</sup> (1), s. 150.

<sup>78</sup> See, for instance, *Arkansas* (8), s. 11-4-402(a); *Colorado* (10), s. 8-4-101(7.5)(b); *North Carolina* (41), s. 13-12.0305(f); *North Dakota* (42), s. 34-14-04.1.

found, for example, in the laws and regulations in *Bahamas*,<sup>79</sup> *Cuba*,<sup>80</sup> *Egypt*,<sup>81</sup> *Nicaragua*<sup>82</sup> and *Sri Lanka*.<sup>83</sup> In other countries, such as *Argentina*,<sup>84</sup> *Chile*,<sup>85</sup> *Peru*<sup>86</sup> and *Uruguay*,<sup>87</sup> the law makes specific reference to deductions for the repayment of housing loans or the payment of rent in the case that accommodation is provided by the employer.

**229.** In many cases, employers are authorized to make deductions from wages in settlement of workers' purchase of goods manufactured by the enterprise. This is the case, for instance, in *Ecuador*,<sup>88</sup> *Panama*<sup>89</sup> and *Paraguay*.<sup>90</sup> Similarly, in *Canada*<sup>91</sup> and *Spain*,<sup>92</sup> the law provides for the

<sup>79</sup> (1), s. 64(1). This is also the situation in *Argentina* (1), ss. 131, 132(f); *Azerbaijan* (1), s. 175(6); *Botswana* (1), s. 81(3); *Canada*: British Columbia (6), s. 22(4); *Colombia* (1), ss. 149(1), 151; *Costa Rica* (1), s. 36; *Dominican Republic* (1), s. 201(4); *El Salvador* (2), s. 136; *Guatemala* (2), s. 99; *Honduras* (2), s. 372; *Islamic Republic of Iran* (1), s. 45(c); *Israel* (1), s. 25(a)(6); *Kenya* (1), s. 6(1)(h); *Libyan Arab Jamahiriya* (1), s. 35; *Oman* (1), s. 58; *Panama* (1), s. 161(11); *Syrian Arab Republic* (1), s. 51; *Zambia* (1), s. 45(1)(e). Similarly, deductions for the reimbursement of loans are permitted in the United States, at the state level, in *Colorado* (10), s. 8-4-101(7.5)(b); *New Jersey* (37), s. 12:55-2.1(a); *North Carolina* (41), s. 13-12.0305(c); *Ohio* (43), s. 4113.15(D)(3); *Oregon* (45), s. 652.610(3)(e); *Pennsylvania* (46), s. 9.1(10); *Rhode Island* (47), s. 28-14-10.

<sup>80</sup> (1), s. 125.

<sup>81</sup> (1), s. 40.

<sup>82</sup> (5), s. 3(5).

<sup>83</sup> (4), s. 18(8); (5), s. 2(1)(g).

<sup>84</sup> (1), ss. 131, 132(d), (i). This is also the case in *Colombia* (1), ss. 149(1), 152; *Costa Rica* (1), s. 69(k); *Mexico* (2), s. 110(II), (III); *Panama* (1), s. 161(4), (9).

<sup>85</sup> (1), s. 58. Such deductions may not exceed 30 per cent of the worker's total remuneration.

<sup>86</sup> (12), s. 14; (13), s. 7. The maximum permissible amount of such deductions varies from one-fourth to one-third of the worker's wages.

<sup>87</sup> (6), s. 1.

<sup>88</sup> (2), ss. 42(6), 90. This type of deduction is limited to 10 per cent of the worker's monthly remuneration. This is also the case in *Argentina* (1), ss. 131, 132(h); *Canada*: Saskatchewan (17), s. 58(1); *Colombia* (1), s. 149(1); *Mexico* (2), s. 110(I). Similarly, in the United States, some state laws authorize deductions in respect of company products or other goods, wares or merchandise purchased from the employer; see, for instance, *Colorado* (10), s. 8-4-101(7.5)(b); *New Jersey* (37), s. 12:55-2.1(a); *Pennsylvania* (46), s. 9.1.

<sup>89</sup> (1), s. 161(10). Such deductions may not exceed 10 per cent of the worker's wages.

<sup>90</sup> (1), s. 242. The amount deducted may not exceed 30 per cent of the worker's monthly remuneration.

<sup>91</sup> (1), s. 181(b), (c); (2), s. 21; *Alberta* (5), s. 12(1); *Manitoba* (7), s. 39(4); *New Brunswick* (8), s. 9(1)(g); *Newfoundland and Labrador* (9), s. 27(f); *Northwest Territories* (10), s. 14(b); *Nova Scotia* (12), s. 50(2)(i); *Prince Edward Island* (15), ss. 5(1)(d), 13(2)(a); *Saskatchewan* (17), s. 15(4)(e), (f).

<sup>92</sup> (6), Annex. Similarly, in *Cape Verde* (1), s. 121(2)(e), and *Guinea-Bissau* (1), s. 106(2)(e), the law authorizes deductions for the cost of meals in the workplace, the use of

deduction of the value of the products received by the worker in the form of allowances in kind.

**230.** In accordance with the law and practice of certain countries, deductions from wages in the form of caution money, or security amounts, are permissible. In the *Democratic Republic of the Congo*,<sup>93</sup> for instance, employers may make deductions for the purpose of building up a security to guarantee that workers honour their obligation to return to the employer in good condition all goods, products, moneys and, in general, everything that has been entrusted to them. The sums deducted are to be deposited in the worker's name in a bank or similar establishment. By the mere fact of having made the deposit, the employer acquires a preferred claim over the security for any debt arising out of the total or partial failure of the worker to fulfil this obligation. The amount of the security may be restored to the worker or paid over to the employer only by mutual agreement between them, upon the production of a copy of a final court decision. In the *Philippines*,<sup>94</sup> as a general rule, employers may not require their workers to make deposits from which deductions could be made for the reimbursement of loss or of damage to tools, materials or equipment supplied by them, except when they are engaged in such trades, occupations or business where the practice of making deductions or requiring deposits is a recognized one, or is necessary or desirable, as determined by the Secretary of Labor in appropriate rules and regulations.

**231.** In a number of countries, the law authorizes deductions in the case of overpayment made to employees as a result of accounting errors, or any other extra amount, and in the case of the payment in excess of social benefits. This is

telephones, or any other products and services provided by the employer and expressly requested by workers.

<sup>93</sup> (1), ss. 93, 94. This is also the case in *Burkina Faso* (1), ss. 131 to 134; *Central African Republic* (1), ss. 92 to 95; *Comoros* (1), ss. 93 to 96; *Congo* (1), ss. 77 to 79; *Gabon* (1), ss. 136 to 139; *Mali* (1), ss. L.126 to L.129.

<sup>94</sup> (1), s. 114. Similarly, in *Sri Lanka* (4), s. 18(4); (5), s. 2(1)(d), the law provides that the amount required to be furnished as security by the employee may not exceed such percentage of the remuneration as may be approved by the labour commissioner.

the position, for example, in *Botswana*,<sup>95</sup> *Panama*,<sup>96</sup> *Paraguay*<sup>97</sup> and the United States.<sup>98</sup> In *Hungary*,<sup>99</sup> wages paid without any justification may be reclaimed in writing from the employee within 60 days, but no provision is made for any automatic deduction from wages.

**232.** In some other cases, regulations permit wage deductions in the event of a dismissal of employees before the expiration of the business year for which they have already used up their vacation leave for the days of vacation that have not been worked off. This is the situation, for example, in the *Russian Federation*,<sup>100</sup> *Tajikistan*<sup>101</sup> and *Slovakia*.<sup>102</sup> In other countries, such as *Brazil*,<sup>103</sup> in the case of the worker's failure to give due notice of termination,

<sup>95</sup> (1), s. 81(1)(d)(iv). Provided that the deductions are made in such a manner as to cause no undue hardship to the employee. This is also the case in *Azerbaijan* (1), s. 175(2)(f); *Belarus* (1), s. 107; *Bulgaria* (1), s. 272(1)(ii); *Canada* (1), s. 254.1(2)(d), and *Newfoundland and Labrador* (9), s. 36(3)(c); *Costa Rica* (1), s. 173; *Czech Republic* (1), s. 121(1)(h); (2), s. 12(1)(e); *Estonia* (2), s. 36(2); *Islamic Republic of Iran* (1), s. 45(d); *Kenya* (1), s. 6(1)(e); *Kyrgyzstan* (1), s. 242(3)(i); *Malaysia* (1), s. 24(2)(a); *Mexico* (2), s. 110(I); *Republic of Moldova* (1), s. 132(1); *Myanmar* (1), s. 7(2)(f); *Russian Federation* (1), s. 137(2)(iii); *Slovakia* (1), s. 131(2)(d); *Swaziland* (1), s. 56(1)(e); *Tajikistan* (1), s. 109(5); *Ukraine* (1), s. 127(2)(i); *United Kingdom* (1), s. 14(1), and *Isle of Man* (14), s. 13(5)(a); *Zambia* (1), s. 45(1)(c). In *Nigeria* (1), s. 5(5), such deductions may be made from the wages of a worker only in respect of overpayments effected during the three months immediately preceding the month in which the overpayment was discovered.

<sup>96</sup> (1), s. 161(3). Such deductions may not exceed 15 per cent of the worker's wages.

<sup>97</sup> (1), s. 242. This type of deduction is limited to 30 per cent of the worker's monthly remuneration.

<sup>98</sup> See, for instance, *North Carolina* (41), s. 13-12.0305(h), and *Pennsylvania* (46), s. 9.1. In *Indiana* (19), s. 22-2-6-4(a), the aggregate disposable earnings of an employee that may be subjected to an employer deduction for overpayment may not exceed 25 per cent of the employee's disposable weekly earnings. However, when a single gross wage overpayment is equal to ten times the employee's gross wages earned due to an inadvertent misplacement of a decimal point, the entire overpayment may be deducted immediately. In *Michigan* (28), s. 408.477(4), any deduction for overpayment may not be greater than 15 per cent of the gross wages earned in the pay period in which the deduction is made.

<sup>99</sup> (1), s. 162. Similarly, in *Romania* (1), s. 106, any persons who have received a sum which was not owed to them are required to refund it. In the Australian State of *Queensland* (7), s. 396, employers may recover overpaid wages by deducting amounts from the employee's wages but may not reduce the employee's wages for the pay period by more than a quarter.

<sup>100</sup> (1), s. 137(2)(iv). This is also the case in *Azerbaijan* (1), s. 175(2)(d); *Belarus* (1), s. 107(2)(ii); *Estonia* (2), s. 36(1); *Kyrgyzstan* (1), s. 242(3)(ii); *Republic of Moldova* (1), s. 132(2); *Ukraine* (1), s. 127(2)(ii).

<sup>101</sup> (1), s. 109(6).

<sup>102</sup> (1), s. 131(2)(g).

<sup>103</sup> (2), s. 487(2).

the employer may deduct the amount of the wages corresponding to the period of notice.

**233.** In certain countries, such as the *Republic of Moldova*<sup>104</sup> and *Ukraine*,<sup>105</sup> the law regulates deductions in the case of unaccounted advances for official travel or removal expenses, or for any other economic expenses that have not been spent or returned in due time.

**234.** In other countries, such as *Botswana*,<sup>106</sup> *Malta*<sup>107</sup> and *Norway*,<sup>108</sup> the law provides for deductions in the case of non-performance of work because of unauthorized absence or stoppage.

**235.** Finally, in certain countries, such as *Botswana*,<sup>109</sup> *Kenya*<sup>110</sup> and *Zambia*,<sup>111</sup> the law authorizes deductions from wages for any other purpose and of such other amounts as may be approved by the Minister.

#### *1.2.2.2. Deductions for loss or damage to products, goods or installations*

**236.** Under the terms of Paragraph 2 of the Recommendation, deductions from wages for the reimbursement of loss of or damage to the products, goods or installations of the employer should be authorized only on condition that: (a) the worker concerned can be clearly shown to be responsible for the loss or damage caused; (b) the amount of such deductions is fair and does not exceed the actual amount of the loss or damage; and (c) the worker concerned is given a reasonable opportunity, before a decision is taken, to show cause why the deduction should not be made. This clause, as the preparatory work shows,

<sup>104</sup> (1), s. 132(1). This is also the case in *Azerbaijan* (1), s. 175(2)(e); *Belarus* (1), s. 107; *Canada: Newfoundland and Labrador* (9), s. 36(3)(f); *Czech Republic* (1), s. 121(1)(e); (2), s. 12(1)(g); (4), s. 18(1)(f); *Kyrgyzstan* (1), s. 242(3)(i); *Russian Federation* (1), s. 137(2)(ii); *Slovakia* (1), s. 131(2)(e), (f); *Tajikistan* (1), s. 109(3).

<sup>105</sup> (1), s. 127(2)(i).

<sup>106</sup> (1), s. 81(1)(d)(i). This is also the case in *Cape Verde* (1), s. 107(1), *Myanmar* (1), s. 7(2)(b), and *Oman* (1), s. 59. In *Egypt* (1), s. 36(2), workers who turn up at the workplace, but are prevented from working by *force majeure* or factors not attributable to the employer are entitled to only half their wage. In the *United Kingdom* (1), s. 14(5), and the *Isle of Man* (14), s. 13(5)(e), the law authorizes wage deductions on account of the worker's participation in a strike or other industrial action.

<sup>107</sup> (1), s. 26(2).

<sup>108</sup> (1), s. 55(3)(f).

<sup>109</sup> (1), s. 81(1)(d)(vii).

<sup>110</sup> (1), s. 6(1)(i).

<sup>111</sup> (1), s. 45(1)(f).



generally elicited wide acceptance, although the point regarding the worker's responsibility gave rise to some debate.<sup>112</sup>

**237.** A certain number of countries, such as *Guinea*,<sup>113</sup> *Mexico*<sup>114</sup> and *Turkey*,<sup>115</sup> have enacted legislation regulating wage deductions for defective work or damage to property or materials belonging to the employer. According to the law and practice of several countries, such as *Argentina*,<sup>116</sup> *Brazil*,<sup>117</sup> *Lebanon*,<sup>118</sup> *Paraguay*,<sup>119</sup> *Sri Lanka*<sup>120</sup> and *Tajikistan*,<sup>121</sup> such deductions are only permitted in cases in which the damage or loss has been caused by the wilful misconduct or negligence of the worker. In several cases, for instance, in *Libyan Arab Jamahiriya*,<sup>122</sup> *Russian Federation*<sup>123</sup> and *Swaziland*,<sup>124</sup> the law also requires a fair and reasonable evaluation of the damage or loss. Furthermore, under the laws of certain countries, such as *Kyrgyzstan*,<sup>125</sup>

<sup>112</sup> Reference was originally made to loss or damage caused "intentionally or through grave negligence", but it was later suggested that a more suitable form of words such as "bad or negligent work" might avoid difficulties of interpretation. The reference to loss or damage "for which the worker concerned can be clearly shown to be responsible" was finally adopted with a view to sidestepping all controversial wording; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 464, and ILC, 32nd Session, 1949, *Record of Proceedings*, p. 512.

<sup>113</sup> (1), s. 231(4). See also *Azerbaijan* (1), s. 175(2)(c); *Bolivia* (1), s. 35; *Bulgaria* (1), ss. 210(4), 272(1)(v); *Colombia* (1), s. 149(1); *Democratic Republic of the Congo* (1), s. 93(2); *Ukraine* (1), s. 127(2)(iii).

<sup>114</sup> (2), s. 110(I).

<sup>115</sup> (1), s. 31.

<sup>116</sup> (1), ss. 131, 135. See also *Bahrain* (1), s. 76; *Barbados* (1), s. 8; *China* (1), s. 16; *Dominica* (1), s. 8; *Kenya* (1), s. 6(1)(b); *Luxembourg* (1), s. 6(2); *Myanmar* (1), s. 7(2)(c); *Nigeria* (1), s. 5(1); *Saudi Arabia* (1), s. 81; *Syrian Arab Republic* (1), s. 54(2); *Yemen* (1), ss. 64, 99; *United Kingdom: Montserrat* (21), s. 8; *Virgin Islands* (22), s. C32(d); *Zambia* (1), s. 45(1)(b). Similarly, in the United States, deductions for loss of property or faulty workmanship are in principle prohibited unless it can be shown that such loss was caused by wilful act of the employee; see, for instance, *Hawaii* (16), s. 388-6; *Iowa* (20), s. 91A.5(2)(c); *Kentucky* (22), s. 337.060(2)(e), *Minnesota* (29), s. 181.79 and (30), s. 5200.0090; *Washington* (56), s. 296-126-025.

<sup>117</sup> (2), s. 462(1).

<sup>118</sup> (1), s. 69.

<sup>119</sup> (1), ss. 63(a), 240(a), 242.

<sup>120</sup> (5), s. 2(1)(i) and Schedule, list B; (4), s. 18(7)(c).

<sup>121</sup> (1), s. 109(4).

<sup>122</sup> (1), s. 36(1). See also *Hungary* (1), s. 172; *Kyrgyzstan* (1), s. 397(2).

<sup>123</sup> (1), s. 244.

<sup>124</sup> (1), s. 57(3).

<sup>125</sup> (1), s. 399(3), (4). See also the *Republic of Moldova* (1), s. 129(1). In *Viet Nam* (1), ss. 87(2), (3), 89, 90, the worker concerned and a representative of the executive committee of the trade union of the enterprise must be allowed to participate in the procedure to establish the facts

*Norway*<sup>126</sup> and *Philippines*,<sup>127</sup> before any decision concerning a wage deduction is made, a worker must be given a reasonable opportunity to show cause why such a deduction should not be made.

**238.** In contrast, certain countries, such as *Canada*<sup>128</sup> and *Mauritius*,<sup>129</sup> explicitly prohibit employers from making deductions in respect of bad or negligent work or damage to the materials, equipment or other property belonging to them.

*1.2.2.3. Deductions for the supply of tools,  
materials or equipment*

**239.** According to Paragraph 3 of the Recommendation, appropriate measures should be taken to limit deductions from wages in respect of tools, materials or equipment supplied by the employer to cases in which such deductions: are a recognized custom of the trade or occupation concerned; are provided for by collective agreement; or are otherwise authorized by a procedure recognized by national laws or regulations. This clause was adopted with practically no discussion, except on the question of the exact cost that the wage deductions were meant to cover, which was finally left unanswered.<sup>130</sup>

or determine the amount of compensation. In *Paraguay* (1), ss. 63(a), 240(a), 242, deductions for damage to employer's equipment, instruments or products may be made only when confirmed by judicial decision.

<sup>126</sup> (1), s. 55(3)(e).

<sup>127</sup> (1), s. 115.

<sup>128</sup> (1), s. 254.1(3); Alberta (4), s. 12(3); Northwest Territories (11), s. 3(b); Ontario (14), s. 13(5).

<sup>129</sup> (1), s. 13(1)(b).

<sup>130</sup> A proposal to the effect that deductions made for the cost of tools, materials and equipment supplied by the employer should not exceed the cost price of those tools, materials or equipment was countered by another proposal opting for some reference to the cost of replacement for the employer; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 513.

**240.** Only a few countries, such as *Bahamas*,<sup>131</sup> *Colombia*,<sup>132</sup> *Guyana*<sup>133</sup> and *Swaziland*,<sup>134</sup> authorize wage deductions in respect of the actual or estimated cost of any tools, materials or equipment supplied by the employer to the worker as well as the use or hire of premises. In most other countries the deductions of this nature are not permissible, apparently on the understanding that the goods supplied form part of the normal cost to be borne by the employer in setting up and equipping a business.

*1.2.2.4. Deductions in the form of fines for breaches of discipline*

**241.** The text originally proposed by the Office on disciplinary fines provided that such deductions should be subject to the following conditions: (a) that the worker has committed a breach of the provisions of works regulations previously established in conformity with a procedure approved by the competent authority; (b) that the worker concerned or representatives of the staff have been given an opportunity to be heard; and (c) that the proceeds from disciplinary fines do not accrue to the financial profit of the employer.<sup>135</sup> This provision was the subject of considerable criticism at the first Conference discussion and was finally deleted from the draft text of the Recommendation.<sup>136</sup>

<sup>131</sup> (1), s. 62(2). Deductions in respect of goods supplied to employees are generally prohibited, except for tools or implements supplied to employees, or goods not exceeding a certain value supplied to employees at their request when there is no store within five miles of the place of employment where the employees could have purchased such goods. See also *Barbados* (1), s. 9(1)(a); *Dominica* (1), s. 9(1)(a); Luxembourg (1), ss. 2, 6(4); United Kingdom: *Montserrat* (21), s. 9(a); *Virgin Islands* (22), s. C32(c).

<sup>132</sup> (1), s. 149(1).

<sup>133</sup> (1), s. 23.

<sup>134</sup> (1), s. 56(1)(c).

<sup>135</sup> It was explained that the intention was to cover legally authorized works regulations dealing with such aspects of labour discipline as the observance of safety regulations, and also to ensure that governments were left free to decide exactly how the proceeds from disciplinary fines would be used; see ILC, 31st Session, 1948, Report VI(c)(2), pp. 77-78.

<sup>136</sup> Some governments indicated that deductions in the form of disciplinary fines were simply prohibited at the national level, and that such deductions would amount to summary punishment imposed by the injured party. The Worker members firmly opposed the adoption of international regulations concerning deductions of this nature; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 465.

**242.** In many countries, such as *Argentina*,<sup>137</sup> *Barbados*,<sup>138</sup> *Cameroon*,<sup>139</sup> *Guatemala*,<sup>140</sup> *Nigeria*<sup>141</sup> and Viet Nam,<sup>142</sup> the imposition of disciplinary fines by way of wage deductions is formally prohibited. Similarly, in *Mexico*,<sup>143</sup> the national legislation stipulates that any contractual clause providing for deductions from wages in the form of disciplinary fines is null and void and not binding on the contracting parties and also that the imposition of fines is unlawful irrespective of the reasons or nature of such fines.

**243.** In contrast, deductions in the form of fines for breaches of discipline, acts of negligence or offences against works rules are authorized in certain countries, such as *Chile*,<sup>144</sup> *Iraq*,<sup>145</sup> *Morocco*<sup>146</sup> and *Romania*.<sup>147</sup> In Kuwait,<sup>148</sup> Oman<sup>149</sup> and the United Arab Emirates,<sup>150</sup> fines may be imposed for disciplinary offences relating to hours of work, workplace regulations or personal conduct. Employers who employ ten or more employees are obliged to post in a conspicuous place a list of disciplinary penalties and the conditions under which each of these penalties may be imposed, on the understanding that no more than one punishment may be imposed for a single contravention and that a worker may not be punished after the expiry of 15 days from the date any act was proven to have been committed or from the usual pay day. Fines may be

<sup>137</sup> (1), s. 131. This is also the case in *Benin* (1), s. 215; *Burkina Faso* (1), s. 127; *Democratic Republic of the Congo* (1), s. 92; *Dominica* (1), s. 8; *Mauritania* (1), s. 104; *Mauritius* (1), s. 13(1); *Senegal* (1), s. L.129; *Togo* (1), s. 32; United Kingdom: *Montserrat* (21), s. 8, and Virgin Islands (22), s. C32(d); United States: *Hawaii* (16), s. 388-6, *Indiana* (19), s. 22-2-8-1, *Kentucky* (22), s. 337.060(2)(a), *Louisiana* (24), s. 635, *Minnesota* (30), s. 5200.0090.

<sup>138</sup> (1), s. 8.

<sup>139</sup> (1), s. 30(1).

<sup>140</sup> (2), s. 60(e).

<sup>141</sup> (1), s. 5(1).

<sup>142</sup> (1), s. 60(2).

<sup>143</sup> (1), s. 123A-XXVII(f); (2), s.107.

<sup>144</sup> (1), s. 58. This is also the case in *Cape Verde* (1), s. 121(2)(d); *Colombia* (1), s. 150; *Ecuador* (2), s. 44(b); *Guinea-Bissau* (1), s. 106(2)(d); *Israel* (1), s. 25(4); *Lebanon* (1), s. 68(1); *Libyan Arab Jamahiriya* (1), s. 78(1); *Luxembourg* (1), s. 6(1); *Myanmar* (1), s. 7(2)(a); *Syrian Arab Republic* (1), s. 66; United Kingdom (1), s. 14(2), and *Isle of Man* (14), s. 13(5)(b).

<sup>145</sup> (1), ss. 126(2), 128, 129.

<sup>146</sup> (1), s. 14. However, the Government has reported that under the new draft Labour Code which is currently before the Parliament, the right to impose fines as a disciplinary measure has been repealed.

<sup>147</sup> (1), ss. 100(1)(d), 101(2).

<sup>148</sup> (1), ss. 50, 51(5). This is also the case in *Bahrain* (1), ss. 101, 102(5), 103; (2), s. 1 and Schedule; (3), ss. 1, 5; *Qatar* (1), s. 72; *Saudi Arabia* (1), ss. 125, 126, 127.

<sup>149</sup> (1), ss. 33, 35.

<sup>150</sup> (1), ss. 102, 104, 105.

in the form of a specified amount or an amount equivalent to the wages due for a specified period. In *Turkey*,<sup>151</sup> fines may only be imposed for reasons set out in a collective agreement or contract of employment. In *Sri Lanka*,<sup>152</sup> the acts or omissions in respect of which fines may be imposed on workers are specifically enumerated in labour regulations. These include absence from work without reasonable excuse, late attendance, negligence at work, sleeping on duty, wilful failure to comply with orders, theft of goods, fraud or dishonesty, wilful insubordination, interference with safety devices and violation of instructions concerning the maintenance and cleanliness of the premises.

**244.** In most of the countries which authorize such deductions from wages, the national legislation also contains provisions guaranteeing the procedural fairness of the disciplinary action, for instance by requiring written notification of the worker or recognizing the right to lodge an appeal. In many countries, no fine may be imposed after 15 to 30 days have elapsed since the offence was committed or discovered. In other cases, the law requires employers to keep a special register showing every such deduction and to make the register available at all reasonable times to labour inspectors. In Saudi Arabia,<sup>153</sup> for instance, no disciplinary sanctions may be imposed on employees until they have been notified in writing of the charges against them, their statements have been heard, they have been allowed to defend themselves and all of the above has been entered into a report placed in their personal file.

**245.** In certain countries, legal provisions exist to ensure that the employer may not benefit financially from fines imposed for disciplinary reasons. In *Egypt*<sup>154</sup> and *Lebanon*,<sup>155</sup> for instance, the law provides that the proceeds derived from any fines inflicted on workers shall accrue to a special account and shall be used in the workers' interests in accordance with regulations to be issued by the competent government authority. In Bahrain<sup>156</sup> and the United

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<sup>151</sup> (1), s. 32. Similarly, in *Malta* (1), s. 26(1), (3) the grounds on which fines may be imposed have to be specified in a written contract of service and the terms of any such contract must have been previously approved by the Director of Labour and Emigration.

<sup>152</sup> (4), s. 18(7); (5), s. 2(1)(i). Similarly, in *Poland* (1), s. 108(2), workers are liable to fines mainly for unauthorized absence, failure to observe works rules on safety and hygiene or fire protection, and the consumption of alcohol during working hours.

<sup>153</sup> (1), s. 126. See also Bahrain (3), ss. 5, 7, 8, and United Arab Emirates (1), s. 110.

<sup>154</sup> (1), s. 70. See also *Libyan Arab Jamahiriya* (1), s. 80, and *Syrian Arab Republic* (1), s. 70.

<sup>155</sup> (1), s. 71; (4), ss. 1 to 5. The special account is administered by a joint committee and its primary function is to provide financial assistance to workers in case of unforeseen expenses or needs, in particular in the event of sickness, accident, death or a wedding.

<sup>156</sup> (1), s. 103; (4), ss. 1, 3, 4.

Arab Emirates,<sup>157</sup> a joint committee established within the enterprise is entrusted with reviewing possible social welfare activities and deciding on the use of the sums collected, which may include purposes such as the establishment of a sports club, leisure facility, mosque, library, cooperative, the supply of medical care or other similar projects. The funds may not be invested in any manner, nor can they be used for food or clothing. Similarly, in *Turkey*,<sup>158</sup> deductions in respect of fines are credited within one month to the account of the Ministry of Labour and the proceeds may only be used to provide educational and social services to the workers, in conformity with the decisions of a committee chaired by the Minister of Labour, which includes workers' representatives.

**246.** Mention may also be made, in passing, of the problem of deductions from pay for strike days. The Committee wishes to recall in this connection that, although such deductions in principle give rise to no objection, deductions which are higher than the amount corresponding to the period of the strike may be deemed punitive in character, and as such should be avoided.<sup>159</sup>

### 1.2.3. Limitations applicable to wage deductions

**247.** Under the terms of Article 10, paragraph 2, of the Convention, wages must be protected against attachment or assignment to the extent deemed necessary for the maintenance of the worker and his family. In contrast, Article 8, while calling for the determination of the extent of permitted deductions, contains no explicit provision that wages shall be protected to the extent deemed necessary for the maintenance of the worker and his family. However, a similar principle that an upper limit should be placed on deductions, so as to ensure that they are not so heavy as to deprive the workers of the basic minimum income needed for the maintenance of themselves and their families, is found in Paragraph 1 of the Recommendation. This provision, which was not foreseen in the original Office report prior to the drafting of the instrument and which was adopted at both Conference sessions without discussion,<sup>160</sup> stipulates that "all necessary measures should be taken to limit deductions from wages to the extent

<sup>157</sup> (1), s. 105; (2), ss. 1, 4.

<sup>158</sup> (1), s. 32. Similarly, in *Poland* (1), s. 108(4), the proceeds from any fines imposed by the employer have to be dedicated to social purposes.

<sup>159</sup> It may be recalled that the Committee on Freedom of Association, in referring to this question, has considered that the imposition of sanctions for strike action in the form of wage deductions in excess of the amount corresponding to the period of the strike was not conducive to harmonious labour relations; see *Digest of decisions and principles of the Freedom of Association Committee*, 4th (revised) edition, 1996, pp. 120-121.

<sup>160</sup> See ILC, 31st Session, 1948, Report VI(c)(2), p. 76; ILC, 31st Session, 1948, *Record of Proceedings*, p. 464; ILC, 32nd Session, 1949, *Record of Proceedings*, p. 512.

deemed to be necessary to safeguard the maintenance of the worker and his family”.

**248.** Despite the fact that there seems to be no convincing explanation as to why the principle of seeking to protect workers’ earnings from excessive deductions was not incorporated into the text of the Convention, as is the case for attachment and assignment, the Committee considers that this seeming incongruity should not be overemphasized. The Committee is satisfied that Article 8, paragraph 1, imposes an obligation to set limits for deductions from wages which in itself reveals an underlying concern that deductions should not become arbitrary or unreasonable. On a number of occasions, the Committee’s comments concerning the application of Article 8 are based on the understanding that limits should be placed on the aggregate of authorized deductions to the extent necessary for the maintenance of workers and their families.<sup>161</sup> The Committee therefore considers that Article 8, paragraph 1, of the Convention incorporates the idea of applying a limitation to deductions so as to ensure the maintenance of workers and their families, even though this idea is explicitly expressed only in Paragraph 1 of the Recommendation.

#### *1.2.3.1. General limits for maximum deductible amounts*

**249.** The labour laws in several countries apply progressive ceilings for deductions to fixed portions of wages. These rates often vary from one-twentieth or one-tenth for the lowest wage portion, to one-third or one-half, and even two-thirds, for the highest portion, while there are no limits to deductions from wages above a prescribed amount. This is the case, for instance, in *Cameroon*,<sup>162</sup> *Côte d’Ivoire*,<sup>163</sup> *Gabon*<sup>164</sup> and *Senegal*.<sup>165</sup> In these countries, when calculating the amount to be stopped, all wage supplements have to be included, except unattachable allowances, sums payable by way of reimbursement for expenses incurred by the worker and family allowances. Similarly, in *Bulgaria*,<sup>166</sup> limits on wage deductions depend on monthly income levels, and vary from one-fifth of the wages of workers if they earn up to 60 levas, to one-half if they earn more than 300 levas.

<sup>161</sup> See, for instance, RCE 1984, 173 (*Libyan Arab Jamahiriya*). The Committee has addressed a direct request in this sense to *Belize* and *Kyrgyzstan* in 1995.

<sup>162</sup> (1), ss. 75, 76; (5), s. 2(1). This is also the case in *Burkina Faso* (1), ss. 128(1), 129; (3), s. 1; *Central African Republic* (1), ss. 112, 113; (4), s. 1; *Chad* (1), ss. 276(1), 277; (4), s. 1; *Congo* (1), ss. 100(1), 101; (3), s. 1; *Djibouti* (1), ss. 107, 108; (3), s. 1; *Mauritania* (1), ss. 105(1), 106; *Niger* (1), ss. 170(1), 171; (3), s. 218; *Togo* (1), ss. 103(1), 104; (2), s. 1.

<sup>163</sup> (1), ss. L.34.1, 34.2; (2), ss. 2D-68(1), (3).

<sup>164</sup> (1), ss. 161, 162; (2), s. 1.

<sup>165</sup> (1), ss. L.130(3), L.131(1), (2); (4), s. 1.

<sup>166</sup> (1), s. 272(2); (3), s. 341(1).

**250.** Many countries establish the maximum deductible amount in terms of a specific percentage of wages. The limit so fixed varies considerably from one country to another and is set at one-fifth of the wages earned in *Bahamas*<sup>167</sup> and *Thailand*,<sup>168</sup> one-fourth in *Seychelles*<sup>169</sup> and *Zambia*,<sup>170</sup> and one-third in *Cuba*,<sup>171</sup> *Hungary*<sup>172</sup> and *Swaziland*.<sup>173</sup> In contrast, in *Indonesia*,<sup>174</sup> *Panama*<sup>175</sup> and *Romania*,<sup>176</sup> the law provides that the total of any amounts deducted from the wages of an employee in respect of any one month may not exceed 50 per cent of the wages earned by the employee during that month, while in *Poland*,<sup>177</sup> all authorized deductions, including deductions for maintenance payments, income tax payments, cash advances and fines, may not amount to more than three-fifths of the remuneration.

**251.** In other countries, the maximum percentage of wages which may be deducted varies depending on the type of deductions involved. For example, in the *Russian Federation*<sup>178</sup> and *Ukraine*,<sup>179</sup> the total amount of deductions may not exceed 20 per cent of the worker's remuneration, or 50 per cent in specific cases stipulated by the legislation. In the case of multiple deductions under several judicial orders, workers should in all cases retain not less than 50 per cent of their earnings, except when serving a prison sentence or recovering alimony for under-age children. Similarly, in *India*,<sup>180</sup> the total amount of

<sup>167</sup> (1), s. 64(1). Similarly, in *Estonia* (2), s. 36(3), the amount payable to an employee after deductions must equal at least 80 per cent of the statutory minimum wage rate.

<sup>168</sup> (1), s. 76.

<sup>169</sup> (1), s. 33(2).

<sup>170</sup> (1), ss. 45(4), 46(2), 46A(1).

<sup>171</sup> (1), s. 125. This is also the case in *Cape Verde* (1), s. 121(3); *Guyana* (1), s. 23; *Nigeria* (1), s. 5(7); United Kingdom: *Montserrat* (21), s. 9, and *Virgin Islands* (22), s. C32. Similarly, in *Viet Nam* (1), s. 60(1), the aggregate amount deducted may not exceed 30 per cent of the monthly wage.

<sup>172</sup> (1), s. 161(3); (3), s. 65.

<sup>173</sup> (1), ss. 56(4), 57(4). However, in case of loss or damage to tools, materials or other property belonging to the employer, the total amount of authorized deductions may not exceed one-half of the employee's wages.

<sup>174</sup> (2), s. 24(2). This is also the case in *Guinea-Bissau* (1), s. 106(3); *Kenya* (1), s. 6(3); *Malaysia* (1), s. 24(8); *Mauritius* (1), s. 13(3).

<sup>175</sup> (1), s. 161.

<sup>176</sup> (1), s. 109(2).

<sup>177</sup> (1), s. 87(4).

<sup>178</sup> (1), s. 138. This is also the case in *Azerbaijan* (1), s. 176; *Belarus* (1), s. 108; *Republic of Moldova* (1), s. 133(1), (2).

<sup>179</sup> (1), s. 128; (2), s. 26.

<sup>180</sup> (1), s. 7(3); (3), s. 21(2A).



deductions which may be made in any wage period from the wages of any employed person must not exceed 50 per cent of such wages, or 75 per cent in cases where such deductions are wholly or partly made for payments to cooperative societies. In *Sri Lanka*,<sup>181</sup> the aggregate of authorized deductions varies from 50 to 75 per cent of the wages due depending on the trade in which the worker is employed. In *Croatia*,<sup>182</sup> the Labour Act provides that not more than one-half of the worker's salary may be deducted by force of law to fulfil the legal obligation of supporting another person and not more than one-third of the salary to fulfil other obligations. In *Singapore*,<sup>183</sup> the total amount of deductions made from the salary of an employee in any one salary period may not exceed 50 per cent of the salary payable, although this does not include deductions made for absence from work, payment of income tax, recovery of advances or loans and payments with the consent of the employee to registered cooperative societies.

**252.** In some countries, the law seeks to protect the worker from excessive deductions not only by prescribing the maximum proportion of earnings which may be deducted, but also by providing that the minimum wage should remain immune from deductions. In *Kyrgyzstan*,<sup>184</sup> for instance, the total amount of authorized deductions may not exceed 20 per cent of the wages due to the employee, and in any case the wage after deduction may not be less than the minimum wage established by law. In the *Islamic Republic of Iran*,<sup>185</sup> only the amount in excess of the minimum wage may, by judicial decision, be withheld to cover workers' debts to their employer, and in any event such an amount may not exceed one-quarter of the total wage. Similarly, in *Colombia*<sup>186</sup> and *Mexico*,<sup>187</sup> the legislation provides that no deduction may be made from wages if the said deduction would bring the worker's remuneration below the minimum wage level.

**253.** In the case of the *Czech Republic*<sup>188</sup> and *Slovakia*,<sup>189</sup> the law prescribes a fixed cash amount which is free from deductions, while authorizing deductions without any limitation in respect of any sums exceeding that amount.

<sup>181</sup> (2), s. 2(a).

<sup>182</sup> (1), s. 88.

<sup>183</sup> (1), s. 32(1).

<sup>184</sup> (1), s. 243(1). Similarly, in *Tajikistan* (1), s. 109, deductions are limited to 50 per cent of wages, and may in no case affect the minimum wage.

<sup>185</sup> (1), s. 44.

<sup>186</sup> (1), ss. 149(2), 151.

<sup>187</sup> (1), s. 123A-VIII; (2), s. 110.

<sup>188</sup> (6), ss. 1, 2.

<sup>189</sup> (5), ss. 1(1), 2(1).

**254.** Finally, mention should be made of some countries, such as *Bolivia, Costa Rica, Democratic Republic of the Congo, Ecuador, Honduras, Japan, Republic of Korea, Nicaragua, Paraguay, Spain, Uganda, Uruguay* and *Venezuela*, where the legislation gives no indication as to the permissible extent of wage deductions. The Committee has on a number of occasions emphasized the importance of establishing an overall limit to the deductions that can be made from the wages of workers since, although in practice no difficulties exist when the deductions are small fractions of the wages, problems arise or can arise when the total amount of the various deductions is such as could either completely or virtually wipe out the wage.<sup>190</sup>

*1.2.3.2. Specific limits for particular forms  
of wage deductions*

**255.** In many countries, specific limits are prescribed for deductions in the form of fines for faults committed by a worker. In *Iraq*<sup>191</sup> and *Turkey*,<sup>192</sup> for instance, the fine may not amount to more than three days' wages in any one month, while in Kuwait,<sup>193</sup> *Libyan Arab Jamahiriya*<sup>194</sup> and Saudi Arabia,<sup>195</sup> the deduction in one month may not exceed the equivalent of five days' pay. In *Sri Lanka*,<sup>196</sup> the sum deducted for any fine imposed on the worker by the employer in respect of any act or omission may not exceed 5 per cent of the wages earned, while in *Romania*,<sup>197</sup> disciplinary action in the case of a wilful breach of obligations on the part of an employee may take the form of a wage reduction of 5 to 10 per cent for a period of from one to three months. In *Ecuador*,<sup>198</sup> no employer may deduct more than 10 per cent from the worker's wage by way of fine.

<sup>190</sup> For instance, the Committee has addressed direct requests in this sense to *Libyan Arab Jamahiriya* and *Uruguay* in 2001, to *Belize* in 1995, and to *Venezuela* in 1987.

<sup>191</sup> (1), s. 126(2). The amount deducted, however, may not exceed 20 per cent of the worker's monthly wage. In *Kenya* (1), s. 6(1)(c), an employer may deduct an amount not exceeding one day's wages in respect of each working day for the whole of which the employee, without leave or lawful cause, absents himself from the place of employment. See also *Lebanon* (1), ss. 68(1), 70.

<sup>192</sup> (1), s. 32.

<sup>193</sup> (1), s. 51(5). This is also the case in *Bahrain* (1), s. 102(5); *Oman* (1), s. 35; *Qatar* (1), s. 72(b)(iv); *Syrian Arab Republic* (1), ss. 51, 54(2), 66; *United Arab Emirates* (1), s. 104.

<sup>194</sup> (1), ss. 35, 36(3), 78(1).

<sup>195</sup> (1), s. 125.

<sup>196</sup> (5), s. 2(1)(i).

<sup>197</sup> (1), s. 100(1)(c), (d). In *Japan* (2), s. 91, and the *Republic of Korea* (1), s. 98, a punitive reduction in wages may not exceed one-tenth of the total amount of wages at any pay period.

<sup>198</sup> (2), s. 44(b). This is also the case in *Luxembourg* (1), s. 6.

**256.** With regard to deductions for negligent work or for loss or damage to the employer's property, the limits prescribed in national laws and regulations vary considerably. In *Lebanon*,<sup>199</sup> deductions for the loss, damage or total destruction of machinery, tools, materials or products caused by the worker may not exceed five days' wages in any one month, while in *Turkey*,<sup>200</sup> the sum which the employer is entitled to retain temporarily out of wages for the purpose of covering possible damage claims may not exceed ten days' pay, and any damage eventually caused by workers is only deducted from the sum of money retained as a deposit. In *Mexico*,<sup>201</sup> the total amount of deduction may in no case exceed one month's wages, and each payment may not exceed 30 per cent of the amount by which the wage exceeds the minimum wage. In Viet Nam,<sup>202</sup> in cases where the damage to tools, equipment or other enterprise assets is not serious in nature and is due to carelessness, the maximum amount of compensation must be limited to three months' wages and has to be deducted gradually from wages within the overall 30 per cent limit of permissible monthly deductions. In *Bolivia*<sup>203</sup> and the *Philippines*,<sup>204</sup> deductions for loss or damage to tools, materials or equipment supplied by the employer to the employee may not exceed 20 per cent of the employee's wages in a week. In *Paraguay*,<sup>205</sup> any debt arising out of the loss or damage is to be paid off on successive pay days, while the amount to be deducted may not exceed 30 per cent of the worker's monthly remuneration. In contrast, the legislation of *Norway*<sup>206</sup> sets up a general standard providing that deductions in respect of compensation for damage or loss suffered by the establishment and caused wilfully or by gross negligence on the part of the employee has to be limited to that part of the claim which exceeds the amount reasonably needed by the employee to support himself and his household.

**257.** A certain number of countries regulate by law the extent of deductions that can be made to reimburse pay advances by the employer. For

<sup>199</sup> (1), ss. 69, 70. This is also the case in *Libyan Arab Jamahiriya* (1), s. 36(3) and *Syrian Arab Republic* (1), ss. 54(2), 66.

<sup>200</sup> (1), s. 31.

<sup>201</sup> (2), s. 110(I).

<sup>202</sup> (1), ss. 60, 89. Similarly, in *Romania* (1), s. 109(1), (2), deductions for the recovery of damages may be made by monthly instalments not exceeding one-third of the worker's net monthly wage, whereas in *China* (1), s. 16, the monthly deductions for compensation of economic losses may not exceed 20 per cent of the worker's monthly wage.

<sup>203</sup> (1), s. 35.

<sup>204</sup> (2), Bk. III, Rule VIII, s. 11(d).

<sup>205</sup> (1), s. 242.

<sup>206</sup> (1), s. 55(3).

example, in *Ecuador*<sup>207</sup> and *Tunisia*,<sup>208</sup> an employer may not deduct more than 10 per cent of a worker's wages in settlement of advances of pay. Similarly, in *Sudan*,<sup>209</sup> deductions to repay a salary advance may be made in sums not exceeding 15 per cent of the basic salary, while in *Argentina*<sup>210</sup> and *Mauritius*,<sup>211</sup> deductions for the purpose of recovering any advances of remuneration may not exceed one-fifth of the remuneration. In *Israel*,<sup>212</sup> no more than one-fourth of the wage may be deducted on account of a worker's debts to the employer for wage advances exceeding three months' wages. In *Barbados*<sup>213</sup> and *Dominica*,<sup>214</sup> the total amount which may be stopped or deducted from the wages of a worker in any pay period in respect of materials and tools supplied by the employer or any money advanced by way of loan by the employer may not exceed one-third of the wages earned in that period. In *Poland*,<sup>215</sup> deductions for cash advances given to employees are permissible up to one-half of their remuneration. Finally, in *Sri Lanka*,<sup>216</sup> the law provides that deductions of any sum constituting an advance of wages are to be made from the wages of a worker in equal instalments spread over a period of not less than six months.

**258.** In some countries, the law prescribes specific limits for deductions in respect of repayment of loans, personal credit and other debts, which may vary from 17 per cent in the case of *Dominican Republic*,<sup>217</sup> 20 per cent in *Panama*,<sup>218</sup> while in *Honduras*,<sup>219</sup> only 25 per cent of the sum in excess of 100 lempiras may be deducted.

<sup>207</sup> (2), s. 90. In some other countries, such as *Egypt* (1), s. 40, *Libyan Arab Jamahiriya* (1), s. 35, *Oman* (1), s. 58, and *Syrian Arab Republic* (1), s. 51, the same limit applies to deductions for the reimbursement of loans.

<sup>208</sup> (1), s. 150.

<sup>209</sup> (1), s. 37(1)(b). Similarly, in *Panama* (1), s. 161(3), the amount of deduction may not exceed 15 per cent of the wage payable for the pay period concerned.

<sup>210</sup> (1), ss. 130, 133.

<sup>211</sup> (1), s. 12(3).

<sup>212</sup> (1), s. 25(6), (7).

<sup>213</sup> (2), s. 5.

<sup>214</sup> (1), s. 9(1).

<sup>215</sup> (1), s. 87(3).

<sup>216</sup> (5), s. 3.

<sup>217</sup> (1), s. 201(4).

<sup>218</sup> (1), s. 161(11). This is also the case in *El Salvador* (2), s. 136.

<sup>219</sup> (2), ss. 371, 372.

### 1.3. The duty to furnish information concerning deductions from wages

**259.** Article 8, paragraph 2, of the Convention requires workers to be notified, in the manner deemed most appropriate by the competent authority, of the conditions under which and the extent to which deductions from their wages may be made. The text of this provision met with general acceptance at both Conference discussions and was adopted in the form originally suggested by the Office.<sup>220</sup> The general principle underlying this provision is the necessity to obtain the express or implied acceptance by workers of the conditions under which their earnings may be diminished by way of deduction. Under the clear terms of Article 8, paragraph 2, it is for national authorities to prescribe the exact manner in which effect may be given to the requirement of information.

**260.** This raises the question, however, as to what this provision of the Convention was really meant to cover. In the Committee's view, the drafters' real intention seems to have been to ensure that workers had full, and if possible advanced knowledge of the nature and extent of all possible deductions to which their wages might be subject so that they would not be caught by surprise or otherwise left open to arbitrary deductions. In this sense, while informing workers of the relevant legislation in their contracts of employment or by posted notices of internal work regulations is clearly sufficient to meet the requirements of the Convention, it is questionable whether wage records or wage slips showing deductions for specific pay periods may be deemed adequate. Moreover, Article 8, paragraph 2, of the Convention refers to deductions that "may be made", which implies that workers should receive information on the conditions and limits of deductions in general, separately and over and above the specific information received at the time of each payment.

**261.** The Committee further considers that Article 8, paragraph 2, of the Convention should be read in conjunction with Article 14(a) of the Convention and taking into consideration Paragraph 6 of the Recommendation, which provide that workers should be informed before they enter employment and when any changes take place of the wage conditions under which they are employed, including the conditions under which deductions may be made. The Committee therefore refers to [Chapter VII](#) below for more detailed information on the national law and practice regarding this aspect of wage deductions.

**262.** The legislation in a number of countries specifically provides that, at the time of the conclusion of a contract of employment, an employer is under the obligation to provide the worker with clear information regarding the conditions

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<sup>220</sup> See ILC, 31st Session, 1948, *Record of Proceedings*, p. 462, and ILC, 32nd Session, 1949, *Record of Proceedings*, p. 507.

governing the payment of wages. This is the case, for instance, in *Lebanon*,<sup>221</sup> *Ukraine*<sup>222</sup> and *Zambia*.<sup>223</sup> In *Bahamas*,<sup>224</sup> and *Uganda*,<sup>225</sup> an employment contract must in all cases include certain particulars, including the advances of wages and the manner of repayment of such advances. In *Malta*,<sup>226</sup> an employer must explain to the worker upon engagement the provisions of any recognized conditions of employment that are applicable.

**263.** In a number of countries, the law provides for the provision of wage details or wage statements at the time of payment showing the amount and reasons for any deductions made from gross wages. This is the case, for instance, in *Democratic Republic of the Congo*,<sup>227</sup> *Hungary*,<sup>228</sup> *Mauritius*,<sup>229</sup> *Norway*,<sup>230</sup> *Spain*,<sup>231</sup> *Swaziland*,<sup>232</sup> *Turkey*,<sup>233</sup> *United Kingdom*,<sup>234</sup> *Uruguay*<sup>235</sup> and *Venezuela*.<sup>236</sup> In the *Czech Republic*,<sup>237</sup> wage statements are required, but only in respect of salaried employees whose remuneration is calculated by the month.

<sup>221</sup> (2), s. 4. This is also the case in *Estonia* (2), s. 3(2); *Guyana* (1), s. 17(1); *Republic of Korea* (1), s. 24; *Lithuania* (1), s. 17.

<sup>222</sup> (2), s. 29(1).

<sup>223</sup> (1), ss. 51, 52.

<sup>224</sup> (1), s. 5(1).

<sup>225</sup> (1), s. 11(e).

<sup>226</sup> (1), s. 15(2). Similarly, in *Slovakia* (1), ss. 41(1), 43(1), prior to the conclusion of an employment contract, an employer must acquaint recruited employees with rights and obligations pertaining to working conditions and wage conditions under which they are expected to perform their work.

<sup>227</sup> (1), s. 84. This is also the case in *Chile* (1), s. 54; *Estonia* (2), s. 8(2); *Finland* (1), Ch. 2, s. 16; *Morocco* (1), s. 10; *Rwanda* (4), s. 2; *Slovenia* (1), s. 135(3). Similarly, in *Azerbaijan* (1), s. 173(2), payment documents showing all accounting statements relating to the calculation of salaries and deductions must be issued to employees at the time of each payment. In the *Republic of Moldova* (2), s. 19(2), (3), the law provides in general terms that the employer is obliged to inform the workers about their wage conditions, including the method of calculation and deductions, without specifying when and how such information should be given.

<sup>228</sup> (1), s. 160.

<sup>229</sup> (1), s. 49(2)(b), (c); (2), s. 7 and Schedule C.

<sup>230</sup> (1), s. 55(5).

<sup>231</sup> (1), s. 29(1); (6), Annex.

<sup>232</sup> (1), s. 61(1)(h).

<sup>233</sup> (1), ss. 30, 32.

<sup>234</sup> (1), ss. 8, 9.

<sup>235</sup> (5), s. 2.

<sup>236</sup> (1), s. 133(5).

<sup>237</sup> (1), s. 120(4).

**264.** In other cases, the law provides for the maintenance of a wage register in which all particulars of the worker's wages, including wage deductions and net wages, must be noted. This is the situation, for example, in *Egypt*,<sup>238</sup> *Iraq*<sup>239</sup> and the Republic of Korea.<sup>240</sup> In El Salvador,<sup>241</sup> *Sri Lanka*<sup>242</sup> and *Sudan*,<sup>243</sup> a detailed record must be established for any deductions made from the worker's wages, although the employer has no obligation to provide the worker with a copy of such record, unless the latter specifically requests it.

**265.** In certain countries, such as *Benin*,<sup>244</sup> *Colombia*<sup>245</sup> and *Togo*,<sup>246</sup> the national legislation requires the conditions of remuneration, including authorized deductions, to be posted at the employer's office or at the places where workers are paid. In the *Libyan Arab Jamahiriya*,<sup>247</sup> the law requires every employer to have posted in a conspicuous place in the establishment only the rules concerning disciplinary sanctions, types of penalties and conditions for their application.

**266.** A point which calls for some clarification is whether there can be a presumption of knowledge concerning the conditions and limits applicable to deductions regulated by law. The Committee takes the view that the publication of the conditions and limits relating to deductions in a Labour Code, which is known to all workers, may be considered sufficient for the purposes of this Article of the Convention.<sup>248</sup> Bearing in mind that Article 8, paragraph 2, leaves it to the competent authority to determine the most appropriate manner of bringing the provisions regulating deductions to the knowledge of the worker, this may be deemed a legitimate exercise of the discretionary power accorded by the Convention. Similarly, in the case that wage deductions are regulated by

<sup>238</sup> (1), s. 35. In the *Syrian Arab Republic* (1), s. 69, provision is made for a special file on each worker showing the wage and any subsequent changes therein.

<sup>239</sup> (1), s. 52(1)(a). In *Kyrgyzstan* (1), s. 241(1), (2), every employee must be provided with a pay-book within five days from recruitment containing details about the working conditions and payments.

<sup>240</sup> (1), s. 47. See also *Japan* (2), s. 108, and *Peru* (5), s. 14.

<sup>241</sup> (2), s. 138.

<sup>242</sup> (4), s. 21(2).

<sup>243</sup> (1), ss. 35(8), 65.

<sup>244</sup> (1), s. 213. See also *Burkina Faso* (1), s. 110; *Cameroon* (1), s. 64; *Congo* (1), s. 85; *Japan* (2), s. 106(1); (5), s. 113; *Kenya* (2), s. 20(2).

<sup>245</sup> (1), ss. 5, 9, 105, 108(15).

<sup>246</sup> (1), s. 93.

<sup>247</sup> (1), s. 77. See also *Oman* (1), s. 33.

<sup>248</sup> In this connection, the Governments of *Mexico* and *Panama* report that the provisions of the Labour Code relating to the conditions and limits of authorized deductions are well known to all workers.

collective agreement, it may be presumed that the trade unions concerned disseminate the contents of the collective agreement adequately so that there is generally no need for special measures for this purpose. The Committee therefore considers that the official publication of laws and regulations, in addition to the publicity provided by the press, and the dissemination of the relevant information by employers' and workers' organizations can be regarded as an appropriate method, within the meaning of Article 8, paragraph 2, of the Convention, of informing workers of the conditions and limits of deductions to which they are subject.

#### **1.4. Prohibition of deductions for obtaining or retaining employment**

**267.** Article 9 of the Convention provides that any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter) must be prohibited. As the record shows, this provision gave rise to very lively debate among the drafters of the Convention. Discussions focused mainly on whether fees for employment agencies fell within the scope of this provision, and whether they should therefore be treated as prohibited deductions representing payments for the purpose of securing or retaining employment.<sup>249</sup> Even though the difference of opinion persisted throughout the preparatory work on the Convention, it would seem clear to the Committee that, as finally worded, Article 9 prohibits deductions from wages for payments to fee-charging agencies for the purpose of obtaining or retaining employment, but has no effect on any such payment as may be made directly by the worker to the placement agency (without involving any deduction from wages) in those countries where the

<sup>249</sup> The Office originally proposed the prohibition of deductions in the form of payments for the purpose of obtaining or retaining employment, with the exception of fees for employment agencies authorized by national laws or regulations to charge such fees; see ILC, 31st Session, 1948, Report VI(c)(2), pp. 35-38, 76. During the first Conference discussion, the Worker members proposed the deletion of the exception concerning fee-charging employment agencies, since in their opinion payments made to employment services should be treated as civil debts and should not create charges against wages. The Employer members opposed the amendment, arguing that account should be taken of countries which permitted the operation of fee-charging employment agencies under legal regulation. The amendment was finally adopted and the reference to employment agencies was accordingly deleted from the draft instrument; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 462. At the second Conference discussion, the Employer members proposed to insert, at the beginning of the draft Article, the words "except as otherwise authorized by the competent authority" so as to render the prohibition more flexible and practicable. The Worker members opposed the amendment, which was rejected by a narrow majority; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 507.



operation of fee-charging employment agencies is permitted under national laws or regulations.<sup>250</sup>

**268.** In many countries, the national legislation expressly prohibits any deductions representing payment by the worker to the employer or to an agent of the employer for the purpose of securing or retaining employment. This is the case, for instance, in Bahrain,<sup>251</sup> Hungary,<sup>252</sup> Swaziland<sup>253</sup> and Ukraine.<sup>254</sup> In the United States,<sup>255</sup> federal legislation prohibits “kickbacks” whereby an employee refunds directly or indirectly to the employer or to another person for the employer’s benefit the whole or part of the wage delivered to the employee. Moreover, some state labour laws make it unlawful for an employer, agent or representative of an employer, to demand or receive, directly or indirectly from an employee, a fee, gift, tip, gratuity, or other remuneration or consideration, as a condition of employment or continuation of employment. In Mexico,<sup>256</sup> the law provides that any transfer or assignment of wages in favour of the employer or any third party is null and void, irrespective of the type or form of such operation. In other countries, such as Costa Rica,<sup>257</sup> Guatemala<sup>258</sup> and Nicaragua,<sup>259</sup> the law prohibits employers from demanding or accepting money or payment in kind from workers in return for admitting them to employment or for any other reason. In Namibia,<sup>260</sup> an employer may not require an employee

<sup>250</sup> A similar view was expressed in an informal opinion given by the Office in 1954 at the request of the Government of the Federal Republic of Germany; see *Official Bulletin*, Vol. XXXVII, 1954, p. 388.

<sup>251</sup> (1), ss. 14, 15. This is also the case in *Bulgaria* (4), s. 15; *Czech Republic* (8), s. 5(3); *Japan* (2), s. 6; *Kenya* (1), s. 6(2); *Republic of Korea* (1), s. 8; *Kuwait* (2), s. 10; *Malta* (1), s. 23(4); *Mauritius* (1), s. 13(4); *Republic of Moldova* (2), s. 16(2); *Philippines* (1), s. 117; *United Kingdom: Montserrat* (21), s. 15(b), and *Virgin Islands* (22), s. C32(d); *Zambia* (1), s. 47.

<sup>252</sup> (1), s. 163.

<sup>253</sup> (1), ss. 58, 118(d).

<sup>254</sup> (2), s. 25(2).

<sup>255</sup> (2), s. 531.35. See also *Arizona* (7), s. 23-202; *California* (9), s. 221; *Connecticut* (11), s. 31-73(b); *Hawaii* (16), s. 388-51; *Maine* (25), s. 629; *Michigan* (28), s. 408.478(1); *Minnesota* (29), s. 181.031 and (30), s. 5200.0630; *New York* (39), s. 198-b(2); *Rhode Island* (47), s. 28-6.3-1; *Utah* (52), s. 34-28-3(6); *Washington* (55), s. 49.52.050.

<sup>256</sup> (2), s. 104.

<sup>257</sup> (1), s. 70(b). This is also the case in *Colombia* (1), s. 59(3); *Dominican Republic* (1), s. 47(1); *Ecuador* (2), s. 44(c); *El Salvador* (2), s. 30(2); *Honduras* (2), s. 96(2); *Panama* (1), s. 138(3); *Paraguay* (1), s. 63(b).

<sup>258</sup> (2), s. 62(b).

<sup>259</sup> (2), s. 17(b). The prohibition concerns only payments for the purpose of obtaining employment.

<sup>260</sup> (1), s. 37(a). Similarly, in *New Zealand* (1), s. 12A, under the Wages Protection Act no employer may seek or receive any premium in respect of the employment of any person, whether

to pay or repay any remuneration payable or paid, or to do any act as a direct or indirect result of which the employee is deprived of the benefit of any remuneration so payable or paid.

**269.** In certain countries, such as *Egypt*,<sup>261</sup> *Libyan Arab Jamahiriya*<sup>262</sup> and Saudi Arabia,<sup>263</sup> the national legislation appears to give only partial effect to the requirements of this Article of the Convention, since it prohibits payments made by unemployed persons for the purpose of obtaining employment, but makes no reference to payments for the purpose of retaining employment. In *Brazil*<sup>264</sup> and *Spain*,<sup>265</sup> any provision in an employment contract that obliges the worker to pay a temporary employment agency a sum for recruitment, training or contracting expenses is null and void. In other countries, such as *Barbados*,<sup>266</sup> *Guyana*<sup>267</sup> and *Saint Vincent and the Grenadines*,<sup>268</sup> the scope of the prohibition also appears to be narrower than that required by the Convention, since it applies only to apprentices or learners and makes it unlawful for an employer to receive directly or indirectly from such persons or on their behalf or on their account any payment by way of premium, without excluding, however, the payment of apprenticeship fees made in pursuance of an instrument of apprenticeship duly approved by a wages council. Similarly, in *Bolivia*,<sup>269</sup> deductions from wages for payment to contractors or subcontractors are prohibited only in the case of homeworkers.

**270.** In a number of countries, there are no specific provisions on this point, but the rules governing deductions from wages would appear to exclude the possibility of any wage deduction which in practice represent a direct or indirect payment for the purpose of obtaining or maintaining employment. For

the premium is sought or received from the person employed or proposed to be employed or from any other person. The situation is similar in Canada, in the provinces of Alberta (4), s. 127, British Columbia (6), s. 21, and Saskatchewan (17), s. 76.

<sup>261</sup> (1), s. 23. This is also the case in the *Syrian Arab Republic* (1), s. 19, the United Arab Emirates (1), s. 18, and the United Kingdom (8), s. 6(1).

<sup>262</sup> (1), s. 12.

<sup>263</sup> (1), s. 41.

<sup>264</sup> (3), s. 18; (4), s. 13.

<sup>265</sup> (8), s. 40(1), (2); (9), ss. 11, 12(4).

<sup>266</sup> (4), s. 15(1). See also Kenya (2), s. 19(1), and United Kingdom: Gibraltar (11), s. 19(5)(a).

<sup>267</sup> (4), s. 14(1).

<sup>268</sup> (2), s. 14(1).

<sup>269</sup> (2), s. 26. On several occasions, the Committee has drawn the Government's attention to the absence of a general prohibition covering all workers.

example, in *Argentina*,<sup>270</sup> *Azerbaijan*,<sup>271</sup> *Israel*,<sup>272</sup> *Russian Federation*<sup>273</sup> and *Sri Lanka*,<sup>274</sup> the permissible deductions from wages are exhaustively enumerated in national laws and regulations. Similarly, in *Botswana*,<sup>275</sup> *Iraq*,<sup>276</sup> *Nigeria*<sup>277</sup> and *Romania*,<sup>278</sup> no employer may make any deduction, or make an agreement with any employee for such deduction, or for any payment to the employer by any employee, except where it is expressly permitted under the labour legislation, a collective agreement or an arbitration award. In addition, in *Cameroon*,<sup>279</sup> *Chad*,<sup>280</sup> *Djibouti*,<sup>281</sup> *Gabon*,<sup>282</sup> *Madagascar*,<sup>283</sup> *Niger*,<sup>284</sup> *Senegal*<sup>285</sup> and *Togo*,<sup>286</sup> the law stipulates that any clause in a labour contract or collective agreement authorizing deductions other than those explicitly allowed under the Labour Code is *ipso jure* null and void. Moreover, in most of the above countries, the law makes it a punishable offence for any person to demand or receive from workers any fee or charge whatsoever for acting as an intermediary for the settlement or payment of wages, allowances or costs of any kind. It is further stipulated that any sums withheld from workers in violation of these provisions bear interest at the statutory rate from the date at which they should have been paid, and may be claimed until the right is barred by limitation.

<sup>270</sup> (1), ss. 131, 132. This is also the case in *Belarus* (1), s. 107; *Kyrgyzstan* (1), s. 242(2); *Slovakia* (1), s. 131(1), (2).

<sup>271</sup> (1), s. 175.

<sup>272</sup> (1), s. 25.

<sup>273</sup> (1), s. 137.

<sup>274</sup> (1), s. 19(1)(a); (2), s. 2(a); (4), s. 18; (5), s. 2(1).

<sup>275</sup> (1), s. 80(1). This is also the case in *Dominica* (1), s. 8; *Guyana* (1), s. 23; *Malaysia* (1), s. 24(1); *Uganda* (1), ss. 31, 32.

<sup>276</sup> (1), s. 4(3).

<sup>277</sup> (1), s. 5(1).

<sup>278</sup> (1), s. 87(3).

<sup>279</sup> (1), ss. 75(3), 168(8). This is also the case in *Benin* (1), ss. 227, 303(g); *Burkina Faso* (1), ss. 130, 238(e); *Central African Republic* (1), ss. 112, 114; *Comoros* (1), ss. 114, 237(f); *Congo* (1), ss. 102, 257(g); *Côte d'Ivoire* (1), s. 34.3; *Guinea* (1), s. 233; *Mali* (1), ss. L.121, L.321; *Mauritania* (1), Bk. I, s. 107 and Bk. V, s. 56(g); *Slovenia* (1), s. 136(1).

<sup>280</sup> (1), s. 278.

<sup>281</sup> (1), ss. 109, 228(g).

<sup>282</sup> (1), ss. 162, 195(a).

<sup>283</sup> (1), ss. 80, 200(5).

<sup>284</sup> (1), ss. 172, 333(g).

<sup>285</sup> (1), ss. L.132, L.279(g).

<sup>286</sup> (1), s. 105.

**271.** On various occasions the Committee has addressed comments to governments drawing attention to the need to adopt appropriate legislative provisions effectively and comprehensively banning deductions from wages for obtaining or retaining employment. In particular, the Committee has emphasized that this prohibition should apply not only where the deduction is made directly by the employer, or where the payment or other compensation is ultimately to be received by the employer, but also in respect of deductions retained by a person other than the employer, such as labour contractors or recruiters. Inversely, in a number of cases in which it has been pointed out that the legislation concerning employment services ensures the application of this Article of the Convention as regards payments to intermediaries, the Committee has noted that such provisions do not offer adequate protection to workers against payments to employers or their representatives for the purpose of obtaining or retaining employment.<sup>287</sup> The Committee occasionally receives observations from workers' organizations alleging violations of the provisions of Articles 8 and 9 of the Convention. Recently, for instance, it was reported by a national transport workers' union that workers in public transport enterprises were systematically being subjected to wage deductions to compensate for losses caused by the malfunctioning of the system for the electronic registration of users, the mechanical breakdowns of vehicles and traffic accidents, and that such deductions were practised with a view to the workers being able to keep their jobs.<sup>288</sup>

## **2. Attachment and assignment of wages**

**272.** When workers become indebted, part of their wages may be withheld by the employer in execution of a court order to this effect, known also as an attachment, garnishment or distraint order. Alternatively, workers may choose to agree with the competent judicial or administrative authority upon a voluntary arrangement, or assignment, whereby part of the wages are paid directly to the creditor in settlement of the debts. At the same time, national legislation in most countries protects labour remuneration as the main source of income for workers by establishing a portion of wages which may not be subject to attachment or assignment and which should in theory enable workers and their families to satisfy their basic needs. However, the extent of such protection depends on the nature of the debts, since not all types of debts are subject to the restriction concerning the unattachable portion of wages. Article 10 of the Convention sets

<sup>287</sup> For instance, the Committee has addressed direct requests in this sense to *Bulgaria, Czech Republic, Poland, Tajikistan, Tunisia, Venezuela* and *Yemen* in 2001, to *Bolivia* and *Guinea* in 2000, to *Comoros* in 1998 and to *Sudan* in 1995.

<sup>288</sup> See RCE 2002, 326 (*Costa Rica*).

forth two main principles; first that the attachment or assignment of wages may take place only in a manner and within limits prescribed by national laws or regulations, and secondly that attachment or assignment should be kept within such limits as to ensure a decent standard of living for workers and their families, although the precise conditions and limits in this respect are left to the national authorities.

### **2.1. General observations**

**273.** There is no clear indication in the preparatory work for the instruments under consideration as to why a separate Article was devoted to the attachment and assignment of wages. But the reason could easily have been because these procedures, unlike other deductions, involve a third party outside the employer-employee relationship, while their origin also differs from other deductions on account of their judicial authority. Article 8 was presumably intended to address types of deductions other than those covered by Article 10. The provisions of the Convention dealing with the attachment and assignment of wages, in contrast to those concerning deductions in general, do not mention collective agreements or arbitration awards as means of regulation, since it is generally accepted that these matters depend entirely on legislative authorization. Moreover, as noted above, while the deductions referred to in Article 8 are made from gross wages, the attachment and assignment of wages would appear to concern net remuneration, that is to say the amount of wages remaining after deductions.

**274.** The relationship between Article 10 and Articles 5 and 6 should also be considered in this regard. At the time of the drafting of the provision concerning the direct payment of wages to workers, a question was raised regarding the power of courts to order, even without the consent of the workers concerned, the payment of their wages, or a certain part of their wages, to their family. The position taken at the time was that no problem would arise in this connection, since the competence of the courts is established by law and the point was therefore covered by the reference to national laws or regulations in Article 5. Similarly, the assignment of wages appears to be possible under a legislative provision which requires wages to be paid directly to an employee, but which permits an exception “where the employee concerned agrees to the contrary”. Even though assignment was treated separately in Article 10, it also had a bearing on the discussions concerning Article 5 on the direct payment of wages.

**275.** As regards Article 6, the question arises as to whether it only forbids the unilateral limitation by the employer of the freedom of workers to dispose of their wages, or whether restrictions to which the workers concerned give their contractual consent, such as wage assignment arrangements, are also prohibited

by implication. It should be clear, in this respect, that an assignment arrangement freely agreed upon by the workers concerned may be seen as a manifestation of their freedom to dispose of their wages. In this sense there would seem to be no difficulty in relation to the provisions of Article 6 although there may be some difficulty in relation to Article 10. What would not be permissible under Article 6, however, would be to effect deductions from the wages of workers in execution of an assignment arrangement obtained under duress of any kind, whether the duress is exercised by the employer or by the other party to the agreement authorizing the assignment of wages.

## 2.2. Conditions and limits

**276.** Most countries have established very detailed provisions regarding the attachment and assignment of wages. In general, the attachment of wages is allowed pursuant to court orders for the settlement of personal debts. This is the case, for instance, in *Algeria*,<sup>289</sup> *Azerbaijan*,<sup>290</sup> *Iraq*,<sup>291</sup> *Tajikistan*,<sup>292</sup> and *Yemen*.<sup>293</sup> In other countries, such as the *Czech Republic*<sup>294</sup> and *Slovakia*,<sup>295</sup> the national legislation authorizes the seizure of wages by enforceable decision not only of a court, but also of an administrative authority. In many countries, including *Bulgaria*,<sup>296</sup> *Guinea-Bissau*<sup>297</sup> and *Peru*,<sup>298</sup> the attachment of wages is regulated in accordance with the relevant provisions of the code of civil procedure.

**277.** In most countries, the attachment of workers' earnings is a result of failure to make payments under maintenance orders, i.e. orders for alimony and other maintenance payments. This is the case, for instance, in *Malta*<sup>299</sup> and

<sup>289</sup> (5), ss. 5 to 15.

<sup>290</sup> (1), s. 175(2)(b).

<sup>291</sup> (1), s. 51.

<sup>292</sup> (1), s. 109(2).

<sup>293</sup> (1), s. 63.

<sup>294</sup> (1), s. 121(1)(d); (4), s. 18(1)(c).

<sup>295</sup> (1), s. 131(2)(b).

<sup>296</sup> (1), s. 272(1)(v); (3), s. 341. See also *Poland* (1), s. 87(1); (6), ss. 833, 1083; *Romania* (1), s. 87(3); (5), s. 409; *Sri Lanka* (6), s. 218; *Tunisia* (1), s. 151; (2), s. 354.

<sup>297</sup> (1), s. 107(1).

<sup>298</sup> (10), s. 1.

<sup>299</sup> (2), ss. 381(3), 383(1).

*Zambia*.<sup>300</sup> In *Egypt*<sup>301</sup> and the *Syrian Arab Republic*,<sup>302</sup> while providing for the attachment of wages in settlement of debts in general, the law specifies that alimony payments constitute preferred debts.

**278.** In certain countries, such as *Benin*,<sup>303</sup> *Guinea*<sup>304</sup> and *Madagascar*,<sup>305</sup> wages may be attached for the recovery of cash advances paid by the employer. Similarly, in the *Islamic Republic of Iran*,<sup>306</sup> the attachment is envisaged only in respect of debts owed to the employer. In *Hungary*,<sup>307</sup> the courts may issue distraint orders enabling the employer to recover any sums paid to the employee without legal justification or for the repayment of other debts. In contrast, in *Kyrgyzstan*,<sup>308</sup> *Republic of Moldova*<sup>309</sup> and the *Russian Federation*,<sup>310</sup> an employer is entitled to issue a retention instruction and deduct from wages any sums advanced, or wrongly calculated payments not later than one month from the expiry of the term established for returning the pay advance or the extra amount paid by mistake. If the employer fails to act within this time limit, or if the employee challenges the reasons and amounts retained, the settlement of any debts must be obtained through judicial action.

**279.** Mention should also be made of countries where wages are declared immune from attachment or seizure so that a creditor is not able to obtain payment directly from an employer of any part of the wages of a worker in settlement of debts recognized by court decision. For instance, in *Sri Lanka*,<sup>311</sup> the salary and allowances or wages of public officers, labourers and domestic servants are not liable to seizure or sale in satisfaction of an order for the

<sup>300</sup> (4), ss. 8 to 17.

<sup>301</sup> (1), s. 41.

<sup>302</sup> (1), s. 52.

<sup>303</sup> (1), s. 227(1). This is also the case in *Burkina Faso* (1), s. 128; (3), ss. 7 to 27; *Central African Republic* (1), s. 112; (3), ss. 7 to 32; *Chad* (1), s. 276; (4), ss. 7 to 29; *Comoros* (1), s. 112(2); *Congo* (1), s. 100; (3), ss. 7 to 28; *Côte d'Ivoire* (1), s. L.34.1; (2), ss. 2D-74 to 2D-93; *Democratic Republic of the Congo* (1), s. 95; *Djibouti* (1), s. 107; (3), ss. 7 to 27; *Gabon* (1), s. 161(1); (2), ss. 7 to 27; *Mauritania* (1), s. 105; *Niger* (1), s. 170; *Senegal* (1), s. L.130; (4), ss. 362, 381; *Togo* (1), s. 103(1); (2), ss. 7 to 27.

<sup>304</sup> (1), s. 231.

<sup>305</sup> (1), s. 79.

<sup>306</sup> (1), s. 44.

<sup>307</sup> (1), s. 161(3); (3), ss. 23, 24.

<sup>308</sup> (1), s. 242(3)(i).

<sup>309</sup> (1), s. 132(1).

<sup>310</sup> (1), s. 137.

<sup>311</sup> (6), s. 218(h), (j).

payment of money debts. Similarly, in *Brazil*,<sup>312</sup> *Dominican Republic*,<sup>313</sup> *Ecuador*,<sup>314</sup> *Mexico*<sup>315</sup> and *Uruguay*,<sup>316</sup> as a general rule, wages are not subject to attachment except in the case of alimony and maintenance payments.

**280.** Assignment is often permitted for the reimbursement of a personal debt or any pay advances granted by the employer. It may not exceed the assignable portion of the wages and may be carried out only on the basis of a statement signed by the assignor in person before a magistrate of the local court or an agent of the labour inspectorate. If both such authorities are unavailable within a short distance, the consent of the worker may be recorded in writing before the chief officer of the nearest administrative unit. The details of the assignment agreement, including the assignable limit of the worker's wage and the amount assigned are notified by the registering authority to the employer, who is then empowered to make the corresponding deduction from the worker's wages. The assignee may receive the amounts deducted directly from the person paying the remuneration upon production of a copy of the worker's statement duly registered. Any deductions made from wages pursuant to an assignment arrangement must appear in the worker's wage statement. The assignment arrangement may be cancelled by judicial decision (e.g. by reason of suspected fraud), or terminated by mutual agreement, subject to the same formal conditions, i.e. a declaration filed with a magistrate or labour inspector. Regulations concerning wage assignment along these lines are found, for instance, in *Algeria*,<sup>317</sup> *Chad*,<sup>318</sup> *Gabon*,<sup>319</sup> *Niger*,<sup>320</sup> and *Senegal*.<sup>321</sup> In the United States,<sup>322</sup> state labour laws generally require that all assignments of

<sup>312</sup> (5), s. 649(IV).

<sup>313</sup> (1), s. 200.

<sup>314</sup> (1), s. 35(7); (2), s. 91.

<sup>315</sup> (2), ss. 110(v), 112.

<sup>316</sup> (11), s. 1, 2; (12), s. 381; (13), s. 214. However, in the case of alimony in favour of minors and handicapped, up to 50 per cent of the wages may be attached.

<sup>317</sup> (5), ss. 3, 4. This is also the case in *Benin* (1), s. 227(1); *Burkina Faso* (1), s. 128; (3), s. 6; *Cameroon* (1), s. 75(1); (5), ss. 5, 6; *Central African Republic* (1), s. 112; (4), s. 6; *Comoros* (1), s. 112(2); *Congo* (1), s. 100; (3), s. 6; *Côte d'Ivoire* (1), s. L.34.1; (2), s. 2D-73; *Djibouti* (1), s. 107; (3), s. 6; *Guinea* (1), s. 231; *Madagascar* (1), s. 79; (4), s. 6; *Mauritania* (1), s. 105; *Togo* (1), s. 103(1); (2), s. 6.

<sup>318</sup> (1), s. 276; (4), s. 6.

<sup>319</sup> (1), s. 161(1); (2), s. 6.

<sup>320</sup> (1), s. 170.

<sup>321</sup> (1), s. L.130; (4), ss. 571.1 to 571.6.

<sup>322</sup> See, for instance, *Arkansas* (8), s. 11-4-101; *California* (9), s. 300(b); *Indiana* (19), ss. 22-2-6-2, 22-2-7-4; *Minnesota* (29), s. 181.07; *Rhode Island* (47), ss. 28-15-1 to 28-15-9; *Washington* (55), s. 49.48.090; *Wyoming* (59), ss. 27-4-110, 27-4-111.



wages or salaries due or to become due to any person, in order to be valid, must be acknowledged by the party making the assignment before a notary public or other authorized officer. The assignment must be recorded in the office of the county clerk of the county in which the money is to be paid and a copy served upon the employer or person who is to make payment. In some cases, the express acceptance of the assignment by the employer is also required and such acceptance has to be recorded with the county auditor of the county where the party making the said assignment resides. Moreover, several state laws provide that no assignment may be valid when made by a married person unless the written consent of the person's spouse to the making of the assignment is attached.

**281.** In some countries, the law expressly prohibits the assignment or transfer of wages, in whole or in part, to third parties on any grounds. This is the case, for instance, in *Argentina*,<sup>323</sup> *Colombia*,<sup>324</sup> *Mexico*,<sup>325</sup> *Panama*<sup>326</sup> and *Venezuela*.<sup>327</sup> In other countries, such as *Bolivia*, *Ecuador*, *Nicaragua* and *Paraguay*, the national legislation does not contain any specific provisions regarding the protection of wages from assignment.

**282.** In most countries, a fixed minimum proportion of the wage is declared immune from attachment or assignment, on the clear understanding that workers should in all cases be allowed to retain a certain cash amount essential for the maintenance of themselves and their dependants. In practice, there are various methods for determining the minimum amount which rests immune from attachment or assignment. It may be a fixed sum expressed in national currency. In the *Czech Republic*<sup>328</sup> and *Slovakia*,<sup>329</sup> for instance, the law prescribes a minimum amount of the monthly wage which may not be affected by the execution of court rulings or otherwise be subject to deductions. This amount may be increased by a fixed sum for the spouse and each dependant, but may not exceed a prescribed ceiling above which deductions may be made without restriction. Similarly, in *Luxembourg*,<sup>330</sup> the first 550 euros of a monthly salary may not be assigned or seized. This is also the case in *Malta*,<sup>331</sup> where only

<sup>323</sup> (1), s. 148. In *Switzerland* (2), s. 325, the assignment of wages is generally prohibited except for the payment of maintenance charges and up to the attachable amount.

<sup>324</sup> (1), s. 142.

<sup>325</sup> (2), s. 104.

<sup>326</sup> (1), s. 157.

<sup>327</sup> (1), s. 132.

<sup>328</sup> (7), ss. 1, 2.

<sup>329</sup> (5), ss. 1(1), 2(1).

<sup>330</sup> (3), s. 4; (4), s. 1.

<sup>331</sup> (2), s. 382(1).

salaries exceeding 300 liri per month may be subject to a garnishee order issued by a court in respect of that part of the salary in excess of the above amount, while in *Sri Lanka*,<sup>332</sup> the salary and allowances of an employee in a shop or office, if such salary and allowances in the aggregate do not exceed a prescribed amount, are exempted from seizure for the recovery or payment of money. In *Guatemala*,<sup>333</sup> the legislation provides that a monthly wage not exceeding 100 quetzals may not be assigned, or transferred to third parties other than the spouse and members of the worker's family.

**283.** In other cases, the amount of the monthly wage which is not liable to attachment or assignment is not a fixed sum, but may vary with reference to some other defining legal provision. In *Nicaragua*,<sup>334</sup> for instance, the legislation exempts wages from attachment up to the amount of the minimum wage, while in *Israel*,<sup>335</sup> the portion of the wage which may not be attached, transferred or charged is defined as an amount equal to the benefit under the Assurance of Income Act which would have been payable in the month preceding the payment of the wage to an employee, according to the composition of the family, if she/he were entitled to such benefit.

**284.** Some countries fix a certain amount which cannot be affected by attachment, as well as a maximum attachable percentage of the part of wages exceeding the unattachable amount. In *Austria*,<sup>336</sup> for instance, the undrainable wage amount is fixed at 6,500 shillings, which may be increased by 1,200 shillings for each person for whom the debtor pays maintenance charges, while up to 70 per cent of any part of the wages exceeding 27,000 shillings is liable to seizure. In *Egypt*<sup>337</sup> and the *Syrian Arab Republic*,<sup>338</sup> not more than one-quarter of any wages in excess of a prescribed amount may be attached or assigned in settlement of any debt. In other countries, however, the law prescribes the basic wage amount which is not liable to seizure, while the maximum attachable amount is expressed as a percentage of the overall amount of wages. In *Tajikistan*,<sup>339</sup> up to half the amount of labour remuneration may be subject to seizure by orders for the execution of claims, provided that the net

<sup>332</sup> (6), s. 218(m).

<sup>333</sup> (2), s. 100. This is also the case in *Honduras* (2), s. 373, where wages not exceeding 200 lempiras a month may not be assigned except to the worker's wife or other family members who are financially dependent on the worker.

<sup>334</sup> (1), s. 82(3); (2), ss. 92, 97.

<sup>335</sup> (1), s. 8(a).

<sup>336</sup> (11), s. 291a.

<sup>337</sup> (1), s. 41.

<sup>338</sup> (1), s. 52.

<sup>339</sup> (1), s. 109.

amount of wages to be received by the worker may not be less than the minimum wage established by the State. In *Kyrgyzstan*,<sup>340</sup> the total amount of deductions may not exceed 20 per cent of the wages due to the employee and the amount of wages after deductions may not be less than the minimum wage established by law.

**285.** Similarly, in the *Islamic Republic of Iran*,<sup>341</sup> only the amount in excess of the minimum wage may, by judicial decision, be withheld to cover the worker's debts and, in any event, such amount may not exceed one-quarter of the worker's total wage. In *Colombia*<sup>342</sup> and El Salvador<sup>343</sup> any surplus or amount over and above the minimum wage, which is unattachable, is liable to attachment up to a maximum of 20 per cent of such surplus or amount, while in *Honduras*,<sup>344</sup> only 25 per cent of the sum in excess of the monthly minimum wage (or the first 100 lempiras) is liable to attachment. In *Costa Rica*,<sup>345</sup> the portion of the worker's remuneration that may be attached or assigned is limited to one-eighth of the part which does not exceed three times the monthly minimum wage and up to one-fourth of the remainder. In *Venezuela*,<sup>346</sup> for wage amounts in excess of the unattachable minimum wage, up to one-fifth may be attached, but only when the wage is less than double the amount of the minimum wage, and when the wage exceeds double the minimum wage, up to one-third may be attached. In *Spain*,<sup>347</sup> only the part of the worker's wage which exceeds the minimum interoccupational wage may be attached in proportions ranging from 30 to 90 per cent depending on the number of times the wage exceeds the statutory minimum wage.

**286.** In a large number of countries, the law defines a specified percentage of wages as being immune from seizure; for example, the portion of wages

<sup>340</sup> (1), s. 243(1).

<sup>341</sup> (1), s. 44.

<sup>342</sup> (1), ss. 154, 155. This is also the case in *Panama* (1), ss. 161(6), (7), 162, where the limit is set at 15 per cent of the amount which exceeds the minimum wage. In *Peru* (10), s. 1, up to one-third of any part of the wages exceeding five reference units is liable to attachment.

<sup>343</sup> (2), s. 133.

<sup>344</sup> (1), s. 128(5); (2), s. 371.

<sup>345</sup> (1), s. 172. Similarly, in the *Democratic Republic of the Congo* (1), s. 95(1), the portion of the worker's remuneration that is transferable or attachable is limited to one-fifth of the part which does not exceed five times the monthly minimum interoccupational wage and up to one-third of the remainder.

<sup>346</sup> (1), s. 162; (2) s. 104.

<sup>347</sup> (1), s. 27(2); (18), s. 607. These limits may be reduced by 10 to 15 per cent if the court considers that the family situation of the worker so requires.

subject to seizure in *Bolivia*<sup>348</sup> and *Iraq*<sup>349</sup> is up to 20 per cent, and in *Libyan Arab Jamahiriya*,<sup>350</sup> *Saudi Arabia*,<sup>351</sup> and the United Arab Emirates,<sup>352</sup> up to 25 per cent. In *Belarus*<sup>353</sup> and the *Russian Federation*,<sup>354</sup> up to 20 per cent of wages are, in principle, subject to attachment, and in specific cases defined by law this limit may rise to 50 per cent. In *Hungary*<sup>355</sup> and

<sup>348</sup> (2), ss. 44, 45; (6), s. 179.

<sup>349</sup> (1), s. 51.

<sup>350</sup> (1), s. 34. This is also the case in Bahrain (1), s. 75; Kuwait (1), s. 32; Oman (1), s. 58bis; *Turkey* (1), s. 28. Similarly, in the United States (3), s. 303(a); (2), s. 531.39(b), under the federal Wage Garnishment Law, the maximum part of the aggregate disposable earnings of an individual for any workweek which may be subject to garnishment should not exceed 25 per cent of his disposable earnings for that week or the amount by which his disposable earnings for that week exceed 30 times the federal minimum hourly wage, whichever is less. Similar provisions are contained in certain state laws; for instance, in Nebraska (34), s. 25-1558, wages for any workweek subject to garnishment may not exceed the lesser of 25 per cent of the employee's disposable earnings for that week, or the amount by which the employee's earnings exceed 30 times the federal minimum hourly wage, or 15 per cent of the employee's earnings for that week, if the individual is a head of a family. With respect to assignment, state laws provide for different limits; for instance, in New Mexico (38), s. 14-13-11(B), any assignment of wages or salary is void if it provides for an assignment of more than 25 per cent of the assignor's disposable earnings for any pay period, while in West Virginia (57), s. 21-5-3, the three-fourths of the periodical earnings or wages of the assignor must at all times remain exempt from such assignment. In addition, in California (9), s. 300(c), a sum not exceeding 50 per cent of the assignor's wages may be withheld by the assignor's employer at the time of each payment of such wages. In other cases, state legislation allows for the assignment of wages without setting any specific limits; see, for instance, Maine (25), s. 627; Mississippi (31), s. 71-1-45; Tennessee (50), s. 50-2-105; Texas (51), s. 63.001; Virginia (54), s. 40.1-31. In Japan, according to the Government's report, under s. 152 of the Civil Execution Act, an amount corresponding to three-quarters of the worker's wages, or if this amount exceeds the amount prescribed by a cabinet order the amount so prescribed (currently set at ¥210,000 a month), may not be attached.

<sup>351</sup> (1), ss. 119(f), 120. However, the overall percentage of the amounts deducted, whether in execution of a judgement or in respect of pay advances, fines and social insurance contributions, may not exceed one-half of the worker's wages, unless a labour disputes board considers that one-half of the worker's remuneration is not sufficient to cover his needs. In this latter case, the worker may in no circumstances be paid more than three-fifths of his wages.

<sup>352</sup> (1), s. 60(f). However, where two or more debts are payable, the maximum deductible sum is half the employee's remuneration.

<sup>353</sup> (5), ss. 496, 523. See also *Azerbaijan* (1), s. 176 and the *Republic of Moldova* (1), s. 133(1). According to information supplied by the Government of Lithuania, s. 140 of the Code of Labour Laws provides for the same attachment limits.

<sup>354</sup> (1), s. 138(1).

<sup>355</sup> (3), s. 65. See also *Barbados* (1), s. 9(3)(c) and *Swaziland* (1), s. 56(4). Similarly, the Government of *Mauritius* has indicated that a rule of practice has developed in law courts not to attach more than one-third of the worker's salary for the purpose of securing the payment of an alimony. In Finland, according to the Government's report, under the terms of the Execution Act two-thirds of the employee's net salary is always excluded from distraint, or alternatively, it must

*Nigeria*,<sup>356</sup> the total amount which may be attached or assigned in any pay period may not exceed one-third of the wages due to the employee in respect of that pay period. In *Qatar*,<sup>357</sup> in the case of attachment in execution of judicial rulings, the attached amounts may not represent more than 35 per cent of the indebted worker's wage. In *Cuba*,<sup>358</sup> *Paraguay*<sup>359</sup> and *Poland*,<sup>360</sup> up to 50 per cent of the wages may be attached.

**287.** In several countries, the amount of the wage which can be attached rises in proportion to the total until it reaches a maximum, above which the entire amount of the wage may be attached or seized. The attachable percentage depends on the portion of the wage to which it applies and often varies between 5 or 10 per cent for the lowest wage segment to 50 or 100 per cent for the highest. This is the case, for instance, in *Cameroon*,<sup>361</sup> *Côte d'Ivoire*,<sup>362</sup> *Gabon*,<sup>363</sup> *Luxembourg*,<sup>364</sup> *Madagascar*,<sup>365</sup> *Niger*<sup>366</sup> and *Senegal*.<sup>367</sup> Similarly, in *Algeria*,<sup>368</sup> the net remuneration due to a worker may be attached or assigned in proportions ranging from 5 to 50 per cent, depending on the number of times the net remuneration exceeds the national guaranteed minimum wage. In *Guatemala*,<sup>369</sup> the attachment limit increases from 10 to 35 per cent in direct

be ensured that the employee is left with at least what is known as the debtor's protected amount and one-fourth of the net income in excess of that protected amount. The employer is obliged to calculate which of these options is more advantageous to the employee and follow that option. The debtor's protected amount is set by decree every year and is currently €18 per day for a single debtor and €6.56 per day for each supported family member.

<sup>356</sup> (1), s. 5(7).

<sup>357</sup> (1), s. 33(b).

<sup>358</sup> (1), s. 125. Similarly, the Government of the Republic of Korea has reported that under s. 579 of the Civil Procedure Act, an amount equivalent to half or more of a person's wages, pension, salary, bonus, retirement benefit or other earnings may not be subject to garnishment.

<sup>359</sup> (1), s. 245.

<sup>360</sup> (1), s. 87(3).

<sup>361</sup> (1), s. 76(1); (5), s. 2(1). This is also the case in *Burkina Faso* (1), s. 129; (3), s. 1; *Central African Republic* (1), s. 113; (4), s. 1; *Chad* (1), s. 277; (4), s. 1; *Congo* (1), s. 101(1); (3), s. 1; *Djibouti* (3), s. 1; *Mali* (1), s. L.123; (2), s. D.123-2; *Mauritania* (1), s. 106; (2), s. 1; (3), s. 362; *Morocco* (3), ss. 1 to 3; *Rwanda* (2), ss. 2, 3; *Togo* (1), s. 104; (2), s. 1.

<sup>362</sup> (1), s. L.34.2; (2), ss. 2D-68, 2D-71.

<sup>363</sup> (2), s. 1.

<sup>364</sup> (3), s. 4; (4), s. 1.

<sup>365</sup> (1), s. 79; (4), s. 1.

<sup>366</sup> (1), s. 171; (3), s. 218.

<sup>367</sup> (1), s. L.131; (4), s. 381.

<sup>368</sup> (5), s. 1.

<sup>369</sup> (1), s. 102(e); (2), ss. 96, 97.

proportion to the amount of the wage received, whereas in *Bulgaria*,<sup>370</sup> the attachable portion of the wage varies from one-fifth to one-half depending on the wage level and the family situation.

**288.** In certain countries, the courts determine the limits of attachment in each individual case. In *Botswana*,<sup>371</sup> no court may make an order for the attachment of the wages or any other payments which may be due to employees such as to seriously jeopardize their well-being or that of the dependant members of their families. According to the information provided by the Government of New Zealand,<sup>372</sup> there are no prescribed national limits for the attachment or assignment of wages, but the processes whereby wages can be attached or assigned through court orders or by the Inland Revenue Department are operated to ensure that any deductions made under statutory authority are reasonable. By way of example, wage deductions made under a deduction notice issued in conformity with the Child Support Act, 1991, may not reduce the net earnings of the person liable below a protected rate after deduction of income tax. In Switzerland,<sup>373</sup> labour remuneration or earnings are liable to seizure except for the amount that the judicial authorities may consider indispensable for the debtor and his/her family. In the United Kingdom<sup>374</sup> and *Zambia*,<sup>375</sup> a court may, on the application of a person entitled to receive payments under a maintenance order, make an “attachment of earnings order” for the purpose of clearing any unpaid amount. In determining the amount of the deduction, the court is obliged to specify the protected earnings rate, that is to say the rate below which, having regard to the resources and needs of the defendant and the needs of persons whom the latter must or may reasonably provide for, the court thinks it reasonable that the relevant earnings should not be reduced.

**289.** However, the general principle of guaranteeing the right of workers to retain the proportion of their wages which is considered necessary to provide for the maintenance of themselves and their families is not without exception. In other words, restrictions concerning the unattachable portion of wages do not apply to certain debts. Under the legislation of many countries, regulations respecting the attachment and seizure of wages may not therefore be relied on to avoid payment of maintenance allowances or other charges to meet the obligation of workers to provide for the needs of their family and dependants. In

<sup>370</sup> (1), s. 272(2); (3), s. 341.

<sup>371</sup> (1), s. 82.

<sup>372</sup> (6), ss. 154, 165.

<sup>373</sup> (3), s. 93.

<sup>374</sup> (2), s. 6(5)(b).

<sup>375</sup> (4), s. 8(3)(b).

*Azerbaijan*,<sup>376</sup> *Israel*,<sup>377</sup> and *Turkey*,<sup>378</sup> for example, the wage amounts declared immune from seizure and the relevant attachment limits established by law are not applicable to any attachment for the payment of family support, alimony debts or maintenance allowances, as the case may be. In *Malta*,<sup>379</sup> where wages may not, in principle, be attached or assigned, the attachment or assignment of any salary or wages (including bonuses, allowances, overtime and other emoluments) may exceptionally be ordered by a court if it is intended to ensure the payment of maintenance due to the wife, a minor or incapacitated child or an ascendant of the employee. Similarly, in *Brazil*,<sup>380</sup> *Dominican Republic*<sup>381</sup> and *Uruguay*,<sup>382</sup> as a general rule, wages are not subject to attachment except for the purpose of recovering alimony and maintenance payments, in which case up to one-third of wages may be seized.

**290.** In certain countries, the law provides that where attachment or assignment is operated for the payment of maintenance allowances, the current monthly amount of such allowance may be deducted in full from that portion of the remuneration which is not liable to attachment, while deductions may also be made from the portion of the remuneration which is liable to attachment, where necessary, as security for overdue maintenance payments. Furthermore, family allowances, which in principle are not liable to attachment or assignment, may exceptionally be attached for the payment of alimony debts. This is the position, for instance, in *Algeria*,<sup>383</sup> *Burkina Faso*,<sup>384</sup> *Congo*,<sup>385</sup> *Luxembourg*,<sup>386</sup> *Mauritania*<sup>387</sup> and *Togo*.<sup>388</sup>

<sup>376</sup> (1), s. 176(3). This is also the case in *Belarus* (1), s. 108; *Islamic Republic of Iran* (1), s. 44; *Kyrgyzstan* (1), s. 243(2); *Republic of Moldova* (1), s. 133(3).

<sup>377</sup> (1), s. 8(b).

<sup>378</sup> (1), s. 28.

<sup>379</sup> (1), s. 21(3); (2), s. 381(3).

<sup>380</sup> (5), s. 649(IV).

<sup>381</sup> (1), s. 200.

<sup>382</sup> (11), ss. 1, 2; (12), s. 381; (13), s. 214. However, in the case of alimony in favour of minors and the handicapped, up to 50 per cent of the wages may be attached.

<sup>383</sup> (5), s. 2. This is also the case in *Cameroon* (5), s. 2(3); *Central African Republic* (4), s. 2(1), (3); *Chad* (4), s. 2(1), (3); *Côte d'Ivoire* (2), s. 2D-69(1), (3); *Djibouti* (1), s. 108(2); (3), s. 2(1), (3); *Gabon* (2), s. 2(1), (3); *Niger* (3), s. 219.

<sup>384</sup> (3), s. 2(1), (3).

<sup>385</sup> (3), s. 2(1), (3).

<sup>386</sup> (3), s. 8.

<sup>387</sup> (2), s. 1; (3), s. 363.

<sup>388</sup> (2), s. 2(1), (3).

**291.** In other countries, the national legislation prescribes special limits for attachments for the recovery of alimony debts which are significantly higher than the limits applicable to attachments for all other purposes. For example, in *Hungary*,<sup>389</sup> up to one-half of the wages may be distrained for child maintenance, as compared with one-third in all other cases, while in *Poland*,<sup>390</sup> up to three-fifths of the remuneration may be attached in the case of maintenance payments, compared with the limit of one-half applied in the case of attachment for other outstanding payments. Similar regulations are found in *Romania*,<sup>391</sup> where up to one-half, instead of the normal limit of one-fifth of the net monthly salary may be attached for the payment of maintenance charges, and in the *Russian Federation*,<sup>392</sup> where up to 70 per cent of the wages may exceptionally be attached, as compared to the ordinary limits of 20 and 50 per cent, for wage deductions of a labour corrective camp inmate or for alimony for minors, and also to compensate the damage caused by a crime. In the *Democratic Republic of the Congo*,<sup>393</sup> by way of exception to the generally applicable attachment limit, up to two-fifths of the worker's remuneration may be attached or assigned where the debt arises out of a legal alimony or maintenance order. In *Austria*,<sup>394</sup> the unattachable wage income is reduced by 25 per cent in respect of the judicial enforcement of maintenance claims. Similarly, in *Egypt*<sup>395</sup> and the *Syrian Arab Republic*,<sup>396</sup> up to one-fourth of the otherwise unseizable portion of the worker's monthly wage may be attached or assigned in settlement of alimony debts. In *Guatemala*<sup>397</sup> and *Honduras*,<sup>398</sup> wages may exceptionally be attached up to 50 per cent in respect of alimony payments.

**292.** In some other cases, the law does not apply special limits to attachment, but merely provides that alimony charges shall have priority over the payment of all other debts. In *Bahrain*,<sup>399</sup> for instance, alimony is granted first priority within the limit of one-eighth of all the amounts deducted, with the

<sup>389</sup> (3), s. 65.

<sup>390</sup> (1), ss. 87(3), 90; (6), ss. 833, 1083.

<sup>391</sup> (5), s. 409.

<sup>392</sup> (1), s. 138(3).

<sup>393</sup> (1), s. 95.

<sup>394</sup> (11), s. 291b(2).

<sup>395</sup> (1), s. 41.

<sup>396</sup> (1), s. 52.

<sup>397</sup> (1), s. 102(e); (2), ss. 96, 97. This is also the case in *Colombia* (1), s. 156; *Costa Rica* (1), s. 172; *Paraguay* (1), s. 245; *Rwanda* (2), s. 3. In *Peru* (10), s. 1, up to 60 per cent of the wages may be attached for alimony purposes.

<sup>398</sup> (2), s. 371.

<sup>399</sup> (1), s. 75. See also *Kuwait* (1), s. 32; *Qatar* (1), s. 33(b); *Saudi Arabia* (1), s. 119(f).



remainder being available for the other debts. In the United Arab Emirates,<sup>400</sup> all sums deductible are to be divided pro rata among the beneficiaries after the payment of any legal alimony at the rate of one-quarter of the employee's remuneration.

**293.** In certain countries, such as *Dominica, Saint Vincent and the Grenadines* and *Sudan*, the labour legislation does not specify the manner and limits within which wages may be attached or assigned, nor does it contain any provision protecting wages from attachment or assignment to the extent necessary for the maintenance of workers and their families. The Committee has emphasized, in this respect, the importance of regulating these matters by enacting appropriate legislative provisions so as to comply fully with the requirements of this provision of the Convention.<sup>401</sup>

\* \* \*

**294.** The provisions of the Convention and Recommendation reviewed above seek to protect the right of workers to receive their wages in full, and as such they go to the very heart of the standards concerning the protection of wages. Deductions from wages are often allowed for various purposes, such as the payment of income tax, social security contributions and trade union dues as well as the settlement of personal debts and maintenance obligations, and the list of authorized deductions is tending to expand, which is resulting in the need being increasingly felt for appropriate rules to protect workers' income from being squeezed beyond socially acceptable levels.

**295.** To this effect, the instruments under consideration establish three main principles: first, deductions, to be lawful, need an appropriate legal basis, and in this respect the Convention recognizes only national laws or regulations, collective agreements and arbitration awards. Consequently, deductions from wages effected on any bases other than those prescribed in Article 8, paragraph 1, of the Convention, such as deductions by virtue of individual agreement or merely with the consent of the worker, are not in conformity with the requirements of the Convention. As regards the specific case of deductions for loss or damage, which presuppose that the responsibility of the worker is clearly established, the instruments under consideration require certain guarantees of fairness and due process. In this respect, the Committee considers that the conditions set out in Paragraph 2(3) of the Recommendation should be

<sup>400</sup> (1), s. 60(f).

<sup>401</sup> For instance, the Committee has addressed direct requests in this sense to *Botswana* in 2001 and *Uganda* in 1995.

read in the light of evolving human rights law principles concerning access to justice and a fair hearing.

**296.** Secondly, all authorized deductions must be limited. Under the terms of the Convention, member States are free to adopt the system of limitation which they consider appropriate, such as a fixed amount, a percentage of the worker's wage or using the minimum wage as a reference. In setting the respective limits, however, they should be guided by two interrelated objectives: in the first place, as suggested in Paragraph 1 of the Recommendation, the net amount of wages received by workers should in all cases be sufficient to ensure a decent living income for themselves and their families; in the second place, such net remuneration should not be diminished by deductions to such an extent as to render meaningless the principle set out in Article 6 of the Convention concerning the freedom of workers to dispose of their wages. In the Committee's view, in addition to setting specific limits for each type of deduction, it is therefore also important to establish an overall limit beyond which wages cannot be further reduced, in order to protect the income of workers in the case of multiple deductions.

**297.** Thirdly, all relevant information regarding the grounds on which and the extent to which wages may be subject to deductions must be communicated in advance to the workers concerned so as to avoid any unexpected decrease in their remuneration which would compromise their ability to support themselves and their household. While Article 8, paragraph 2, of the Convention leaves it to national authorities to decide the means by which such information should be provided, it is clearly preferable to inform workers by means of appropriate references in their contracts of employment or the permanent display of the relevant laws, regulations and/or internal regulations at the workplace, and in any event by means which ensure that workers have advance notice of the nature and extent of all possible deductions.

## CHAPTER V

### THE PREFERENTIAL TREATMENT OF WORKERS' WAGE CLAIMS IN CASE OF EMPLOYER'S BANKRUPTCY

#### 1. Protection of wage claims by means of a privilege

**298.** Article 11 of the Convention embodies one of the oldest measures of social protection, namely the priority accorded to wage debts in the distribution of the employer's assets in case of bankruptcy. To avoid a situation where wage earners are deprived of their livelihood in the event of the bankruptcy of their employer, provisions have to be made to guarantee the immediate and full settlement of debts owed by employers to their workers. The Convention spells out the widely recognized principle that workers' wage and other service-related claims, regarding a certain period of service or up to a prescribed amount as may be determined by national laws and regulations, should be treated as privileged debts in the event of the bankruptcy or judicial liquidation of an undertaking. It further requires that wages constituting privileged debts must be paid in full before ordinary creditors can be paid even in part. The Convention, however, leaves it to ratifying States to determine the relative priority of wages constituting a privileged debt and the limits within which such claims are to be given preference.<sup>1</sup> Article 11 of the Convention was partially revised by the Protection of Workers' Claims (Employer's Insolvency) Convention (No. 173), which was adopted in 1992, with a view to improving the protection provided for in 1949 in two ways: first, by setting specific standards concerning the scope, limits and rank of the privilege, which are scarcely addressed in Convention No. 95, and secondly by introducing new concepts, such as wage guarantee schemes, designed to offer better protection than the traditional privilege system.

<sup>1</sup> At the first Conference discussion, a proposed amendment to the effect that members of an employer's family employed in the bankrupt undertaking should be excluded from the application of wage privileges in order to avoid abuses failed to be adopted; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 462. At the second Conference discussion, another proposal to give wages a position of absolute priority over other privileged debts was finally withdrawn, as it was realized that it would be difficult to secure acceptance for such a rule in the light of the complexity of bankruptcy law in the various legal systems; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 508. A similar provision is in Article 11 of the Workmen's Compensation (Accidents) Convention, 1925 (No. 17), but refers only to the payment of compensation for personal injury or death in case of industrial accident.

The Committee will first review national law and practice under the system of protection based on preference, as reflected in Article 11 of the Convention, and will then refer to the new standards set out in [Convention No. 173](#), in particular those relating to wage guarantee institutions, and their practical application.

### **1.1. Origins and evolution of the principle of privileged protection of workers' claims**

**299.** It is broadly recognized that workers' wage claims deserve special protection, since the insolvency of an enterprise and consequently the suspension of payments directly threatens the means of subsistence of workers and their families. Moreover, as employees do not normally have a share in the profits of the enterprise, they should not share in its losses either. The preferential treatment of wage claims is by far the most widely accepted and most traditional method of protecting service-related claims in the event of the employer's bankruptcy or the judicial liquidation of an enterprise. The privilege system was first codified in the civil codes of the nineteenth century, beginning with the Napoleonic Code, initially to protect the wages of domestic servants. Protection was progressively extended to other categories of wage earners and the preference principle soon gained recognition in both commercial and labour legislation. In *France*, for instance, the privilege granted to domestic servants was extended in 1838 to cover the claims of wage earners and apprentices for up to six months' wages. Wage claims, however, were placed in the fourth rank of privileged claims, after legal expenses, so that the protection of wage debts often remained illusory. By new legislation enacted in 1935, that part of the privileged claims necessary for the worker's maintenance had to be paid immediately and became known as the "super-privilege".

**300.** The privilege system consists of paying in full out of the available assets of the bankrupt estate certain claims that enjoy priority or a "privilege" over ordinary, non-privileged claims. Wage claims are, of course, not the only claims to be recognized as privileged debts. The legislation in most countries also grants a privilege to various other claims, such as the court expenses occasioned by the bankruptcy proceedings, the sums owed to the State and to social security institutions (unpaid taxes or compulsory insurance contributions), the debtor's personal claims (e.g. funeral or medical expenses) and the maintenance claims of the debtor's family members. Equally important in granting a privilege to certain claims is the relative priority, or rank, which may be given to those claims in relation to other privileged debts. Higher ranking creditors have to be satisfied in full before lower ranking creditors can recover even a fraction of their claim, which in most cases implies that a privilege in itself is not sufficient to guarantee debt recovery and that, unless wage claims are assigned a sufficiently high-ranking preference, they have little chance of being paid.

**301.** Despite its overwhelming recognition, however, the privilege system varies significantly in its practical application from country to country. National rules and practices governing preferential treatment differ principally with regard to the scope of protection, that is the categories of protected workers and the nature of the claims covered, the relative priority assigned to wage claims as compared to other privileged debts, the reference period covered by the privilege or the other limits set for privileged protection, and the assets of the bankrupt employer against which the preferred claim is enforceable. The Committee will briefly examine below each of these four aspects.

## 1.2. Scope of privilege

### 1.2.1. Categories of workers treated as privileged creditors

**302.** Through the protection afforded to workers' claims, the legislation in all countries primarily seeks to protect the wages of those employed under a formal contract of employment or those who are in an employment relationship with the insolvent employer. Rules and practices differ, however, as regards persons engaged in types of employment such as home work, apprenticeship or subcontracting. In *Uruguay*,<sup>2</sup> preferential treatment seems to apply only to lawyers, medical doctors, attorneys, dependent workers, manual workers and domestic servants. In *Venezuela*,<sup>3</sup> the law seems to protect the claims of domestic workers differently from those of other workers, providing for a lower rank of preference and a more limited service period. In contrast, in *Mauritius*,<sup>4</sup> for instance, apprentices are treated as privileged creditors in exactly the same manner as ordinary workers. In nearly all countries, civil servants and other workers employed by public enterprises are not covered by the protection afforded by labour legislation to the wage claims of other workers, on the grounds that the bankruptcy or insolvency of the employer of such groups of workers is simply not conceivable.<sup>5</sup>

**303.** In certain countries, the preferential treatment of wage claims covers all workers without distinction. The legislation in *Algeria*,<sup>6</sup> for instance, grants a

<sup>2</sup> (14), s. 11; (15), s. 2369(4); (16), s. 1732(4).

<sup>3</sup> (1), ss. 158, 275; (2), s. 101; (3), s. 1870.

<sup>4</sup> (3), ss. 2148, 2152.

<sup>5</sup> For instance, the Government of *Spain* has indicated, on the occasion of the ratification of [Convention No. 173](#) which revises Article 11 of the Convention, that public employees are excluded from the scope of legislation dealing with protection of workers' claims by means of a privilege.

<sup>6</sup> (1), s. 89.

first-rank privilege to wage claims irrespective of the nature, validity or form of the employment relationship.

**304.** In other countries, the legislation excludes specific employees from privileged protection on account of their possible responsibility for the insolvency of the enterprise. Thus, claims of managerial employees or other influential persons considered as having clearly contributed to the financial straits of the enterprise are granted no privilege. The assumption is that those accountable for business failure should not, by the mere fact of their legal status as employees of the insolvent enterprise, be allowed to benefit from the legal mechanism designed to protect the unintentional victims of the insolvency. In Norway,<sup>7</sup> for instance, the following persons are barred from privileged creditor status: (i) employees who exercised or were in a position to exercise material influence on the debtor's enterprise by virtue of their position as managers; (ii) employees holding a stake of at least 20 per cent in the enterprise; (iii) employees who have served on the board; (iv) employees closely connected or related (immediate family, relatives, cohabitee, fiancé, etc.) to the manager or to persons holding a stake of at least 20 per cent in the enterprise.

**305.** In other cases, while no creditors are excluded from privileged protection of their wage claims on account of their managerial position in the insolvent enterprise or their close relationship with the insolvent employer, they are conferred a lower priority in the distribution of assets. For example, in New Zealand,<sup>8</sup> any unpaid wages due to the bankrupt's wife or husband where the latter was employed in the bankrupt's trade or business rank seventh among priority claims, that is after legal costs, workers' wage claims (i.e. four months' wages or no more than \$6,000), taxes and any amount of salary or wages that is not a preferred claim (e.g. wage claims exceeding the four-month or \$6,000 limit). In Australia,<sup>9</sup> the legislation on corporate insolvency, while recognizing the same priority status, restricts the benefits of certain "excluded employees", i.e. those who were directors of the insolvent company at any time during the 12 months before the commencement of the winding up, their spouses and their relatives, and limits the payable amounts to \$2,000 in respect of wages and \$1,500 for leave entitlements.

<sup>7</sup> (2), s. 9-3. Similarly, in *Saint Vincent and the Grenadines* (3), s. 457(1)(b), the law exempts the salary of a company director from the preferential treatment otherwise reserved for all wages or salaries of any employee in the event of winding up of a company. In the United States, some state laws specifically provide that no officer, director, or general manager of a corporation employer or any member of an association employer or partner of a partnership employer is entitled to preferential treatment of any wage debts; see for instance, Utah (52), s. 34.26.1.

<sup>8</sup> (2), s. 104(1)(g).

<sup>9</sup> (4), s. 556(1A), (1B).

### 1.2.2. Type of service-related claims covered by a privilege

**306.** National law and practice differs widely in this respect, as the legal notion of wages varies greatly in different countries. Even though the original intention was to protect wages in the strict sense of money payment for work done or services rendered pursuant to the terms of a contract of employment, the principle of preferential treatment gradually came to cover claims other than wages in the narrow sense. Thus, the legislation in a considerable number of countries grants a privilege to broader claims, such as holiday pay, allowances in respect of other paid leave (e.g. sick or maternity leave) and severance pay.

**307.** In a certain number of countries, such as *Brazil*,<sup>10</sup> *Burkina Faso*,<sup>11</sup> *Colombia*,<sup>12</sup> *Honduras*,<sup>13</sup> *Mauritania*,<sup>14</sup> *Panama*,<sup>15</sup> *Senegal*<sup>16</sup> and *Venezuela*,<sup>17</sup> the legislation expressly provides that for the purposes of the privileged treatment of wage debts in case of bankruptcy, the term "wage" is deemed to include the basic wage, irrespective of its denomination, wage supplements, leave allowances, bonuses, compensation and benefits of all kinds. In New Zealand,<sup>18</sup> the privilege covers all wages, whether payable for time or for piece-work and whether earned wholly or in part by way of commission, and all holiday pay, as well as any remuneration in respect of absence from work through sickness or other good cause.

<sup>10</sup> (2), s. 449(1); (6), s. 102. This is also the case in *Bolivia* (1), s. 14; (7), s. 1345(2); *Central African Republic* (1), s. 109; *Chile* (1), s. 61; *Mali* (1), s. L.115; *Nicaragua* (2), s. 89; *Niger* (1), s. 167; *Rwanda* (1), s. 104.

<sup>11</sup> (1), s. 116. In *Mauritius* (3), ss. 2148, 2152 and *Seychelles* (1), s. 37, the privilege covers labour remuneration of all kinds, including dismissal allowance and paid leave, while in *Cameroon* (1), s. 70(2), the preference extends to compensation due for breach of contract and to damages for unfair dismissal. In *Azerbaijan* (1), s. 178(2), priority is given to the payment of wages and all social benefits, including payment for unused paid leave.

<sup>12</sup> (1), s. 157.

<sup>13</sup> (1), s. 128(4); (2), s. 374.

<sup>14</sup> (1), s. 93.

<sup>15</sup> (1), s. 166.

<sup>16</sup> (1), s. L.118.

<sup>17</sup> (1), ss. 158 to 160; (2), s. 101.

<sup>18</sup> (2), s. 104(1)(d), (3); (3), s. 312(1) and Schedule 7, paras. 2, 12. The Government has reported that it intends to include redundancy compensation among the protected wage claims, as well as raising the threshold of the wage sums protected by privilege. See also *United Kingdom: Guernsey* (13), ss. 1(1)(b), 6(a), and *Jersey* (20), s. 32(1)(b).

**308.** In many countries, including Croatia,<sup>19</sup> the *Czech Republic*,<sup>20</sup> *Malaysia*<sup>21</sup> and *Thailand*,<sup>22</sup> protected claims include severance pay and other termination benefits, while in *Ecuador*,<sup>23</sup> *Peru*<sup>24</sup> and *Tajikistan*,<sup>25</sup> specific reference is made to the payment of retirement plans. Similarly, in Singapore,<sup>26</sup> in addition to all wages or salaries, priority wage debts also include ex gratia payments or retrenchment benefits payable to an employee on the ground of redundancy or by reason of any reorganization of the employer, compensation, unpaid contributions to superannuation schemes or provident funds.

**309.** Among the countries which have accepted Part II of Convention No. 173 regarding protection of workers' claims by means of a privilege, *Zambia*<sup>27</sup> has brought its legislation into line with the minimum requirements set forth in Article 6 of that Convention. In the event of a bankruptcy, therefore, the following are paid in priority to all other unsecured debts: (i) all amounts due by way of wages accruing to any employee within a period of three months before the date of the receiving order; (ii) all amounts due in respect of leave for the last two years before the date of the receiving order; (iii) all amounts due in respect of any paid absence within the period of the last three months; (iv) recruitment expenses or other amounts reimbursable under any contract of employment; (v) an amount equal to three months' wages by way of severance pay; and (vi) all amounts due in respect of worker's compensation under any written law accrued before the date of the receiving order. Similarly, the Government of *Madagascar*, whose acceptance of the obligations of Part II of Convention No. 173 has terminated its obligations under Article 11 of *Convention No. 95*, has reported that privileged status is accorded to: (i) workers' claims for wages relating to a prescribed period which nonetheless has not so far been specified; (ii) claims for holiday pay; (iii) compensation in lieu of notice of termination amounting to up to six months' wages; and (iv) severance pay on the basis of ten days for every full year of service, but not exceeding six months' wages. In *Mexico*,<sup>28</sup> which has also accepted the obligations arising out of Part II of

<sup>19</sup> (1), s. 86(1). See also Estonia (3), s. 86(1); Republic of Korea (1), s. 37(1); Morocco (2), s. 1248.

<sup>20</sup> (3), s. 31(3).

<sup>21</sup> (1), s. 31(2); (2), s. 292(1).

<sup>22</sup> (1), s. 11.

<sup>23</sup> (1), s. 35(7); (2), s. 88.

<sup>24</sup> (8), s. 1.

<sup>25</sup> (2), s. 26(2).

<sup>26</sup> (2), s. 328(1), (2B).

<sup>27</sup> (2), s. 2(1).

<sup>28</sup> (1), s. 123A(XXIII); (2), ss. 113, 162(I), 434(V), 436.



**Convention No. 173**, the privilege covers the wages earned during the preceding year and any other wage supplements, including claims for holiday, claims for amounts due in respect of other types of paid absence and severance pay of three months' salary upon the termination of their employment. In *Spain*,<sup>29</sup> the privilege covers wage claims, including holiday pay, without any specific time limit but subject to a monetary cap, as well as indemnity for dismissal.

### 1.3. Ranking of the privilege

**310.** The ranking of workers' privilege vis-à-vis the privilege of other creditors is as important as the existence of sufficient assets in the bankrupt estate. Wage claims are often ranked lower than the court expenses incurred on behalf of the creditors and funeral and medical expenses in respect of the deceased debtor, as well as the claims of the State or the social security system. In this latter case, there is a risk that the privilege granted to workers' claims may be of no practical value, since the claims of the tax authorities and those of the social security institutions almost invariably take off the greatest part of the assets.

#### 1.3.1. Absolute priority

**311.** In many countries workers are given higher priority than all other privileged creditors, including the State and the social security system. For example, in *Algeria*,<sup>30</sup> *Brazil*,<sup>31</sup> *Croatia*,<sup>32</sup> *Hungary*,<sup>33</sup> *Paraguay*<sup>34</sup> and the *Philippines*,<sup>35</sup> wage debts are payable before all others, including those owed to the Treasury and to the social security system. In *Mauritius*,<sup>36</sup> wage debts arising from the last 120 days of work are satisfied first and are followed in

<sup>29</sup> (1), ss. 26(1), 32(3).

<sup>30</sup> (1), s. 89. Wage claims are also granted a first-rank privilege in *Chad* (1), s. 268; *Côte d'Ivoire* (1), s. 33(3); *Democratic Republic of the Congo* (1), s. 91; *El Salvador* (2), s. 121; *Gabon* (1), s. 157; *Guinea* (1), s. 223; *Mali* (1), s. L.115; *Malta* (1), s. 27; *Norway* (2), s. 9-3; *Oman* (1), s. 47; *Panama* (1), s. 166; *Romania* (1), s. 87(2); (2), s. 7(2); *Rwanda* (1), s. 102; *Saudi Arabia* (1), s. 15; *Switzerland* (3), s. 219; *Viet Nam* (1), s. 66; *Yemen* (1), s. 8; *Zambia* (2), s. 2(2). In *Tunisia* (1), s. 151-2 only the unattachable part of the wages takes priority over all other privileged claims while the remaining part of wages claims is granted fourth-rank priority among privileged debts, just before the debts owed to the Treasury.

<sup>31</sup> (6), s. 102.

<sup>32</sup> (1), s. 86(1); (2), s. 71(2).

<sup>33</sup> (2), s. 57(1)(a), (2)(a).

<sup>34</sup> (3), s. 445; (1), ss. 247, 248.

<sup>35</sup> (1), s. 110.

<sup>36</sup> (3), ss. 2148, 2152.

order of priority by the costs of the legal proceedings, the claims of the State and the social security system and funeral expenses. It is interesting to note that wage debts in respect of services rendered in the last six months are also recognized as preferential claims, but enjoy a lower ranking privilege, as they are placed in sixth position among privileges enforceable against movable assets and in fourth place among privileges enforceable against immovables.

**312.** Mention should be made here of the notion of “super-privilege”, according to which certain wage claims rank ahead of claims which are secured by a right *in rem* and may thus be satisfied outside the insolvency proceedings. The origins of this concept are to be found in the French and Mexican labour legislation, which were the first to provide for the immediate payment of a certain portion of the wages due, notwithstanding the existence of any other preferred claim, or debt secured by a lien or mortgage. In most cases, the super-privilege is limited to the portion of the wage claim necessary for the worker’s maintenance. For example, in *Côte d’Ivoire*,<sup>37</sup> *Guinea*<sup>38</sup> and *Madagascar*,<sup>39</sup> the super-privilege covers the last 60 days of work or apprenticeship up to a maximum monthly amount applicable to all categories of beneficiaries. In *Spain*,<sup>40</sup> debts in respect of wages for the last 30 days of work are granted priority over all other debts, including those secured by mortgage, to an amount not exceeding twice the minimum interoccupational wage. In *Malaysia*,<sup>41</sup> the law confers priority on employees to whom wages are due from the insolvent employer over and above the rights of secured creditors, provided that the amount does not exceed the wages due for any four consecutive months’ wages. In *Benin*,<sup>42</sup> *Comoros*,<sup>43</sup> and *Senegal*,<sup>44</sup> wage debts, up to a maximum amount equal to the percentage of the wage which is not liable to attachment, enjoy

<sup>37</sup> (1), s. 33(4).

<sup>38</sup> (1), s. 227.

<sup>39</sup> (1), s. 83.

<sup>40</sup> (1), s. 32(1), (3). Similarly, in *Jordan* (1), s. 51(b), *Libyan Arab Jamahiriya* (1), s. 60, and *Saudi Arabia* (1), s. 15, the legislation provides for an immediate advance equal to one month’s wages to be paid to the workers prior to any other outlay, including legal fees and bankruptcy or liquidation costs.

<sup>41</sup> (1), s. 31(1). See also *Luxembourg* (2), ss. 42, 43, where the “super-privilege” covers six months’ wages but limited to six times the minimum social wage.

<sup>42</sup> (1), s. 228. This is also the case in *Burkina Faso* (1), s. 117; *Congo* (2), s. 92; *Cameroon* (1), s. 70(1); *Mauritania* (1), ss. 94, 96. The situation is similar in *Central African Republic* (1), s. 109; *Djibouti* (1), s. 104; *Niger* (1), s. 167; *Togo* (1), s. 100.

<sup>43</sup> (1), s. 108. No order has as yet been adopted establishing the portion of wages which may not be attached and the Committee has been commenting for a number of years on the need to adopt appropriate laws or regulations determining the relative priority of privileged wage debts in accordance with Article 11, paragraph 3, of the Convention.

<sup>44</sup> (1), ss. L.119, L.121.

priority over all other general or special privileged debts irrespective of the length of service. This super-privilege may be claimed on the employer's movable and immovable property and has to be paid within ten days of an adjudication in bankruptcy or winding up order, subject to the sole condition that the liquidator has the necessary funds in hand.

**313.** In a number of countries, wage claims and claims of the tax authorities or of the social security system are assigned the same rank of preference. This is the case in the *Czech Republic*,<sup>45</sup> where taxes and social security contributions, together with the costs of the administration of the estate and workers' claims, constitute the first category in the statutory order of priority. The legislation in *Bahamas*,<sup>46</sup> *Barbados*,<sup>47</sup> *Dominica*,<sup>48</sup> *Guyana*<sup>49</sup> and *Saint Vincent and the Grenadines*<sup>50</sup> provides that all rates, taxes, assessments or impositions and all wage debts due to a salaried employee for up to four months (up to two months for a wage earner) rank equally between themselves and that, if the property of the bankrupt is insufficient to meet them, they are to be abated in equal proportions.

### 1.3.2. Relative priority

**314.** Wage debts are not granted absolute priority everywhere. The legislation in certain countries, such as *Dominican Republic*,<sup>51</sup> *Ecuador*,<sup>52</sup> *Honduras*<sup>53</sup> and *Spain*,<sup>54</sup> ranks the claims of the State or the social security system higher than those of workers. This is also the case in *Lebanon*,<sup>55</sup> where

<sup>45</sup> (3), s. 32(1).

<sup>46</sup> (2), s. 30. Likewise, in *Sri Lanka* (3), s. 347(1), (2); (1), s. 50A; (2), s. 57, and *Uganda* (3), s. 37(1), (2); (4), s. 314, all taxes and local rates having become due and payable within the last 12 months, as well as all wages up to a prescribed amount, are paid in full first. See also *Cyprus* (4), s. 38(1)(b), (2); (5), ss. 299, 300(1)(b); *Kenya* (3), s. 38(1), (2); (4), s. 311(1), (5); *Nigeria* (2), s. 494(1), (4); (3), s. 36(2); *United Kingdom* (4), ss. 175(2), 386(1), and Schedule 6, s. 6, as well as certain non-metropolitan territories such as *Guernsey* (13), s. 1(4), and *Jersey* (20), s. 32(2).

<sup>47</sup> (3), s. 34(1), (2).

<sup>48</sup> (3), s. 37(1).

<sup>49</sup> (2), s. 39(1)(f); (3), s. 225(1)(b), (c).

<sup>50</sup> (3), s. 457(1)(b), (3)(a).

<sup>51</sup> (1), s. 207.

<sup>52</sup> (3), ss. 2398, 2399.

<sup>53</sup> (3), s. 2257(2)(d).

<sup>54</sup> (11), s. 1924. This ranking, however, concerns the workers' claims other than those covered by the guarantee institution.

<sup>55</sup> (1), s. 48. Similarly, in *Egypt* (1), s. 5, *Libyan Arab Jamahiriya* (1), s. 60, and *Syrian Arab Republic* (1), s. 8, wage debts are settled immediately after judicial costs, amounts due to the

wage claims for the past year rank after the claims of the Treasury and claims in respect of judicial costs and compulsory mortgages, while in the United Arab Emirates,<sup>56</sup> unpaid wages constitute a first priority on all the employer's movable and immovable property to be settled immediately after any legal expenses, sums due to the public treasury and alimony awarded under Islamic religious doctrine to wives and children. In Guinea-Bissau<sup>57</sup> and Mozambique,<sup>58</sup> the law provides that all wages are to be paid in full, before ordinary creditors, except for the State, are entitled to claim their share of the assets. The Government of *Madagascar* reported that the claims of the State and the social security system still rank higher than wage debts, but that the new draft Labour Code which is currently under review will give priority to workers' claims.

**315.** In other countries, wage claims are not granted a first-rank privilege, but are still listed ahead of tax claims. For example, in *Bolivia*,<sup>59</sup> *China*<sup>60</sup> and *Singapore*,<sup>61</sup> wage claims are satisfied immediately after the expenses connected with the administration of the bankrupt estate and ahead of state and local taxes. In *Belarus*<sup>62</sup> and the *Russian Federation*,<sup>63</sup> unpaid wages are second-priority claims, immediately after reparation claims for personal injury and death and judicial costs, and before taxes and social security contributions. In *Canada*,<sup>64</sup>

Treasury and expenses for conservation and repairs. However, the Government of *Egypt* has reported that under s. 6 of the new draft Labour Code, which is now before the legislative authority for approval, wages are given first rank priority among privileged debts.

<sup>56</sup> (1), s. 4.

<sup>57</sup> (1), s. 108.

<sup>58</sup> (1), s. 58(2).

<sup>59</sup> (7), s. 1345(2). This is also the case in *Estonia* (3), s. 86(1); *Lithuania* (3), s. 35; *Sudan* (1), s. 71; *Tajikistan* (2), s. 26(1), (2); *Ukraine* (3), s. 21(2); (2), s. 28. In *Malaysia* (2), s. 292(1), wage claims are ranked second after costs and expenses in connection with the liquidation procedure. All remuneration payable in respect of vacation leave is given fourth priority, while any amounts due in respect of contributions payable during the 12 months before the commencement of the winding up under a superannuation or retirement benefit scheme are listed fifth in order of priority, followed by all federal taxes, which come sixth.

<sup>60</sup> (4), s. 37.

<sup>61</sup> (2), s. 328(1), (2B), (3).

<sup>62</sup> (2), s. 144. This is also the case in *Azerbaijan* (2), s. 53; *Kyrgyzstan* (2), s. 87; *Republic of Moldova* (3), s. 28(1), (2); (2), s. 20(1).

<sup>63</sup> (2), s. 106(2); (3), s. 855(2).

<sup>64</sup> (3), s. 136(1)(d). The federal Government has exclusive jurisdiction over bankruptcy and insolvency matters. While there are numerous provincial statutes that confer special protection to wage claims in general, these provisions are not applicable in the event of bankruptcy as the federal insolvency legislation overrides them; see, for instance, *Alberta* (4) s. 109(3); *British Columbia* (6), s. 87(3); *Manitoba* (7), s. 101; *Newfoundland and Labrador* (9), s. 37(1); *Ontario* (14), s. 14(1).

*Central African Republic*,<sup>65</sup> *Colombia*,<sup>66</sup> the United States<sup>67</sup> and *Uruguay*,<sup>68</sup> wage debts are placed in the fourth position and are satisfied immediately after court expenses, funeral expenses and the expenses for the terminal illness of the debtor. In New Zealand,<sup>69</sup> payment of all arrears of wages or salaries is ranked fourth among prioritized debts, immediately after the payment of costs, charges and expenses related to the adjudication procedure and the administration of the bankrupt estate, while the fifth priority in the distribution of assets is for the payment of income tax and other amounts payable to the Commissioner of Inland Revenue. In Australia,<sup>70</sup> under the relevant Commonwealth legislation concerning personal insolvency, the costs of insolvency, including expenses of the administration of the bankruptcy, expenses of the trustee, costs of any audit and funeral expenses in the case of a deceased debtor, are the only unsecured debts that come prior to employees' wage claims. More concretely, fifth ranking is given to a fixed amount for each employee (\$1,500 or as set by regulation) to whom remuneration is owed; sixth is the payment of all amounts due in respect of workers' compensation; and seventh is payment of all amounts due in respect of long-service leave, annual leave or sick leave in respect of a period before the date of the bankruptcy. Similarly, under the federal statutes governing corporate insolvency, priority is given to employees' entitlements, such as wages and superannuation contributions, injury compensation, leave entitlements and

<sup>65</sup> (1), s. 108. See also Chile (2), s. 2472; *Guatemala* (2), s. 101(b); *Mexico* (1), s. 123A(XXIII); (2), ss. 113, 114; (3), s. 262; Morocco (2), s. 1248; *Niger* (1), s. 166; *Togo* (1), s. 99. Similarly, in *Botswana* (3), ss. 82(1), 83(1), 84(1), 85(1), 86(a), and *Zimbabwe* (2), ss. 101 to 104, 105(1), (6), 106(1), wage claims are paid out of the free residue of the estate, i.e. that portion of the estate under sequestration which is not subject to any right of preference by reason of any special mortgage, legal hypothec, pledge or right of retention, immediately after the funeral and death-bed expenses of the insolvent, the costs of sequestration, and all taxed costs of any execution upon the estate of the insolvent, but before any taxes on the income of the insolvent, which rank fifth in the order of preferences. In *Bulgaria* (2), s. 722(1), wage claims are granted fourth-rank privilege, whereas unpaid contributions to the state social security system and taxes are placed sixth and seventh respectively. See also *Seychelles* (2), s. 2101 and *Thailand* (1), s. 11.

<sup>66</sup> (1), s. 157; (2), s. 2495.

<sup>67</sup> Under the Federal Bankruptcy Code, in the event of an employer's bankruptcy, wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual, are preferred claims and rank in priority next after administrative expenses, funeral expenses, expenses of the last sickness, and the allowances of the surviving spouse and minor children. Similar provisions are found in most state laws; see, for instance, *Arizona* (7), s. 23.354; *Idaho* (17), s. 45-602; *Indiana* (19), s. 22-2-10-1; *Rhode Island* (47), s. 28-14-6.1; *Utah* (52), s. 34-26-1; *Washington* (55), s. 49.56.010.

<sup>68</sup> (15), s. 2369(4); (16), s. 1732(4).

<sup>69</sup> (2), s. 104(1)(d), (e); (3), s. 312(1) and Schedule 7.

<sup>70</sup> (3), s.109(1); (4), s. 556(1).

retrenchment payments, after certain expenses related to preserving or carrying on the company's business and certain winding up costs.

**316.** In certain countries, such as Bahrain and Kuwait, there do not appear to exist any laws or regulations conferring privileged status to workers in respect of wage claims in the event of the employer's bankruptcy or judicial liquidation of the enterprise. Similarly, the Government of the British Virgin Islands has reported that wages do not constitute privileged debts under the laws of the territory nor are they protected by means of any wage guarantee. In addition, the Government of Germany has stated that by virtue of the new Insolvency Ordinance, which entered into force in 1999, all general preferential rights (including those of the Treasury, social funds and employees) were abolished and that employees are now protected by means of an insolvency allowance which covers unpaid wages of the last three months before the opening of the proceedings. In contrast, the Government of the *United Republic of Tanzania* has reported that workers are treated as privileged creditors as a matter of practice, even in the absence of national laws or regulations on this matter. In other countries, such as the *Islamic Republic of Iran*,<sup>71</sup> *Iraq*<sup>72</sup> and Namibia,<sup>73</sup> while recognizing workers as preferential creditors, the law does not establish the relative priority of wage debts compared to other privileged debts.

#### **1.4. Limitations on the privileged treatment of workers' claims**

**317.** Most countries have found it necessary to set limits on the extent of wage claims to be protected by means of a privilege. Preferential wage debts, therefore, must arise within a prescribed period of service prior to the bankruptcy or judicial liquidation of an enterprise, or may not exceed a prescribed amount. In some cases, the legislation provides for a combination of these two types of limits.

##### **1.4.1. Time limits**

###### *1.4.1.1. Wage claims for work or services rendered prior to bankruptcy or liquidation*

**318.** In many countries the privilege covers at the most a specific period of service, also known as the "reference period", preceding the opening of bankruptcy proceedings or the closure of the enterprise. The protected period

<sup>71</sup> (1), s. 13(1). See also Qatar (1), s. 7.

<sup>72</sup> (1), s. 12.

<sup>73</sup> (1), s. 48(2).

may vary from three months, for instance, in *Kyrgyzstan*<sup>74</sup> and *Zambia*,<sup>75</sup> to three years as in the case of the *Czech Republic*,<sup>76</sup> *Slovakia*<sup>77</sup> and *Tajikistan*.<sup>78</sup> In *Mauritius*<sup>79</sup> and *Uganda*,<sup>80</sup> the reference period is fixed at four months, while in *Argentina*<sup>81</sup> and *Norway*,<sup>82</sup> the maximum protected period is six months. In other countries, such as *Bulgaria*<sup>83</sup> and *Honduras*,<sup>84</sup> the national legislation limits the preferential treatment of wage claims to 12 months preceding the initiation of proceedings or the liquidation of the indebted enterprise. In *Bolivia*<sup>85</sup> and *Central African Republic*,<sup>86</sup> preferred claims are those arising from work performed during the year in which the insolvency occurred and in the preceding year.

**319.** In some countries, the reference period is defined differently depending on the occupational category of the worker, the nature of the debtor, or the periodicity of wage payment. In *Guinea*,<sup>87</sup> for instance, the protected period is six months for wages paid at intervals not exceeding a fortnight and

<sup>74</sup> (2), s. 87.

<sup>75</sup> (2), s. 2(1)(a).

<sup>76</sup> (3), s. 31(4).

<sup>77</sup> (3), s. 32(2)(a). Wage claims for up to three months from the last 18 months of the employment relationship preceding the employer's insolvency are covered by a special guarantee fund.

<sup>78</sup> (2), s. 26(2).

<sup>79</sup> (3), ss. 2148, 2152. This is also the case in *Saint Vincent and the Grenadines* (3), s. 457(1)(b) and *Swaziland* (1), s. 54(2).

<sup>80</sup> (1), s. 36(1).

<sup>81</sup> (1), ss. 268, 273; (4), ss. 241, 246. This is also the case in *Azerbaijan* (2), s. 53; *Denmark* (2), s. 95(1)(i); *Guatemala* (2), s. 101; *Republic of Moldova* (3), s. 28(2)(b); *Morocco* (2), s. 1248; *Paraguay* (1), ss. 247, 248; *Switzerland* (3), s. 219; *Venezuela* (1), s. 158. In addition, the Governments of Japan and Sweden have indicated that priority claims are limited to those which became due during the last six months of the employee's service with the bankrupt debtor. Similarly, in the United States, in *Kansas* (21), s. 44-312, the preference of wages of employees in insolvency extends to six months' wages, while in *Utah* (52), s. 34-26-1, wages owing to workers for work performed within five months next preceding the cessation of business or receivership are to be considered and treated as preferred debts.

<sup>82</sup> (2), s. 9-3.

<sup>83</sup> (2), s. 722(1). This is also the case in *Côte d'Ivoire* (1), s. 33(2); *Lebanon* (1), s. 48; *Mali* (1), s. L.113.

<sup>84</sup> (1), s. 128(4); (2), s. 374.

<sup>85</sup> (7), s. 1345(2).

<sup>86</sup> (1), s. 108.

<sup>87</sup> (1), s. 221.

12 months for wages paid monthly. In *Turkey*,<sup>88</sup> the law provides that in the event of bankruptcy of an enterprise the domestic servants employed by the owner of the enterprise shall be treated as privileged creditors as regards unpaid wages for up to 12 months, whereas all salaried employees, clerical staff and workers employed by the hour or on a piece or task rate shall be treated as privileged creditors for wage claims not exceeding six months prior to the bankruptcy. Inversely, in *Uruguay*,<sup>89</sup> the protected period is six months for claims of manual workers and one year for claims of lawyers, medical doctors, attorneys, dependent workers and domestic servants. More unusual is the situation in *Uganda*,<sup>90</sup> where the length of the protected period depends on the worker's nationality or origin, since privileged debts include all wages of a labourer not exceeding a prescribed amount for work performed during the last four months before the date of the receiving order, or in the case of an African labourer, during 12 months before that date.

*1.4.1.2. Wage claims for work performed after the reference date*

**320.** Under the terms of Article 11, paragraph 1, of the Convention, the privilege is limited to wages due for service rendered during a prescribed period prior to the date of initiation of bankruptcy proceedings, also known as the "reference date". At a time when bankruptcy was tantamount to the immediate closure of the establishment and the termination of employment of the workers, the protection of wages in respect of service performed after the bankruptcy was not at issue. Upon the cessation of operation of the insolvent employer, all workers were automatically dismissed, and it was therefore only natural to confine the preferential treatment of workers' wages to services rendered prior to the bankruptcy or judicial liquidation. Modern practice, however, has shown the need for protection of claims arising after the reference date, as legislation in numerous countries now allows for insolvent enterprises to continue to operate either temporarily with a view to winding up or on a new basis with the aim of redressing their financial situation. As the tendency has shifted from the liquidation to rehabilitation of a firm in difficulties, it is all too common today

<sup>88</sup> (2), s. 206. In *Guyana* (2), s. 39(1)(d), (f), according to the order of distribution of the assets of an insolvent employer, if the assets were obtained from the sale of any plantation, the salaries of the persons employed in the business are protected by privilege for the three months preceding the receiving order, whereas all wages of any worker employed in a mine, woodcutting, or *balata* bleeding business constitute privileged debts in respect of services rendered during four months prior to the date of the receiving order, and those of salesmen in retail provision shops or domestic servants for the two months before that date.

<sup>89</sup> (15), s. 2369(4); (16), s. 1732(4).

<sup>90</sup> (3), s. 37(1)(d); (4), s. 314.



for employees to continue to work after suspension of payment and the institution of proceedings, hence the need to extend privileged protection to claims subsequent to the reference date.

**321.** The legislation in several countries treats wages in respect of services rendered after the beginning of proceedings as administrative expenses or bankruptcy costs. For example, in *Bulgaria*,<sup>91</sup> bankruptcy costs, including payables to employees where the debtor's enterprise has not wound up its operations, are placed third and thus rank higher than the wage claims relating to work performed prior to the institution of bankruptcy proceedings. In *Austria*,<sup>92</sup> the legislation treats as privileged debts only those wage claims arising after the initiation of bankruptcy proceedings, since claims prior to that date are covered – as explained below – by the wage guarantee fund and such claims are considered to be debts of the estate, in the same way as the costs of the bankruptcy proceedings, public taxes and social insurance contributions.

#### **1.4.2. Monetary limits**

**322.** There are two main types of monetary limits to the wage debts protected by privilege; a cash ceiling, i.e. a specified amount, or an adjustable limit defined by reference to figures such as the minimum interoccupational wage or the maximum monthly wage used for calculating social security contributions. In this latter case, the limit does not need periodic adjustment, but changes automatically every time the reference amount is itself reviewed. In *Spain*,<sup>93</sup> for instance, privileged protection, that is protection other than the “super-privilege”, is limited to three times the minimum daily wage rate multiplied by the total number of unpaid days. In *Malta*,<sup>94</sup> wage debts up to the amount of 200 liri constitute privileged claims and are paid in preference to all other claims. In *Australia*,<sup>95</sup> the bankruptcy legislation, i.e. the legislation dealing with the insolvency of individuals and not corporations, provides for a monetary cap to the amounts owed in relation to wage debts (not including amounts in respect of long-service leave, extended leave, annual leave, recreation leave or sick leave) fixed for each employee at \$1,500 or such greater amount as may be prescribed by regulations. In contrast, the legislation on corporate insolvency provides for a maximum limit only with respect to the priority benefits of those who were directors of the corporation and their relatives within 12 months of the commencement of the winding up by limiting

<sup>91</sup> (2), s. 723.

<sup>92</sup> (3), s. 46(1); (4), s. 23(1).

<sup>93</sup> (1), s. 32(3).

<sup>94</sup> (1), s. 27.

<sup>95</sup> (3), s. 109(1)(e); (4), s. 556(1A), (1B).

the payable amounts to \$2,000 in respect of wages and \$1,500 for leave entitlements. In Seychelles,<sup>96</sup> privileged protection of wage claims is limited to a maximum amount of 30,000 rupees in respect of any one claimant.

**323.** Also, in *Benin*,<sup>97</sup> *Burkina Faso*<sup>98</sup> and *Congo*,<sup>99</sup> the amount of the claim protected by a privilege is limited to the part of the wage which is not subject to attachment. It should be noted, in this respect, that according to Article 7, paragraph 1, of [Convention No. 173](#), which incidentally was ratified by *Burkina Faso* in 1999 in respect of Part II, limitations to the protection by privilege of workers' claims are permissible, but must not fall below a "socially acceptable level", while Paragraph 4 of [Recommendation No. 180](#) offers some guidance as to what might objectively constitute a socially acceptable level by referring to variables such as the minimum wage, the part of the wage which is unattachable, the wage on which social security contributions are based or the average wage in industry. The assumption is that since the unattachable portion of the wage by definition corresponds to the minimum amount necessary for the maintenance of the worker and his family, it can be a reliable criterion for the determination of a socially acceptable level of protection of the worker's income in the case of the employer's bankruptcy or insolvency.

### 1.4.3. Multiple limits

**324.** In many countries, the legislation specifies limits in respect of both the maximum protected amount and the maximum protected service period. This is the case, for instance, in *Malaysia*,<sup>100</sup> where the privilege extends to all wages or salaries (including allowances or commissions) not exceeding 1,500 ringgit or such other amount as may be prescribed from time to time on a time or piece-work basis in respect of services rendered within a period of four months before the commencement of the winding up of an insolvent company. In *Botswana*,<sup>101</sup>

<sup>96</sup> (1), s. 37.

<sup>97</sup> (1), s. 228.

<sup>98</sup> (1), s. 117.

<sup>99</sup> (2), s. 92.

<sup>100</sup> (2), s. 292(1)(b). Similarly, in *Kenya* (3), s. 38(1)(c), (d); (4), s. 311(1)(c), (2), priority is granted to the wages or salary of an employee, clerk or servant in respect of services rendered during four months next before the relevant date, not exceeding 4,000 shillings, whereas in the United Kingdom (4), Schedule 6, s. 9, preferential debts include claims for wages in respect of a period of four months next before the relevant date, or a sum not exceeding £800. Four months' wages or a maximum amount of £1,500 is also the statutory limit in Guernsey (13), s. 1(1)(b), whereas in Jersey (20), s. 32(1)(b), the priority claim covers unpaid wages due for a period up to six months or an amount of £2,000.

<sup>101</sup> (3), s. 85(1). Similarly, in *Zimbabwe* (2), s. 105(1), the preferential treatment of wage debts is limited to a period of three months in the case of an employee engaged by the month, or a period of four weeks in the case of an employee engaged by the week, up to a sum of \$400.

preference is given to claims in respect of wages for one month and the wages for the month current with the sequestration of any worker employed by the month (or the wages for one week and the wages for the week current with the sequestration of any worker employed by the week), but to an amount not exceeding 100 pula. In *Bahamas*<sup>102</sup> and *Barbados*,<sup>103</sup> in the case of a clerk or servant, four months' wages or a prescribed amount, whichever is the less, may be paid in preference to ordinary debts, whereas in the case of a labourer or workman the privileged debts are limited to two months' wages or half of the amount prescribed for a clerk or servant.

**325.** In Canada,<sup>104</sup> the federal legislation confers priority to claims in respect of wages, salaries, commissions or compensation of any clerk, servant, travelling salesman, labourer or workman for services rendered during the six months immediately preceding the bankruptcy to the extent of \$2,000 in each case. In *Cyprus*,<sup>105</sup> the preferential treatment of wage debts is limited to the period of 18 weeks preceding the receiving order, or an amount not exceeding 18 times double the amount of basic remuneration subject to insurance contributions. In *Croatia*,<sup>106</sup> only wage claims for the last three months prior to the initiation of the bankruptcy proceedings or prior to the termination of the employment contract are covered up to an amount corresponding, for a particular month, to two-thirds of the national average monthly wage. In *Singapore*,<sup>107</sup> the amount of wage claims settled in priority to all other unsecured debts may not exceed an amount that is equivalent to five months' salary or \$7,500, whichever is lower. In *New Zealand*,<sup>108</sup> employees' wages and holiday pay are protected for a period of four months immediately preceding the adjudication or up to \$6,000. In the *United States*,<sup>109</sup> under the Federal Bankruptcy Code, priority is granted to wages earned within 90 days before the

<sup>102</sup> (2), s. 30; (3), s. 159(1)(b), (c). This is also the case in *Dominica* (3), s. 37(1)(b), (c); *Guyana* (3), s. 225(1)(b), (c); *Nigeria* (3), s. 36(1)(b); (2), s. 494(1)(c), (d); *Sri Lanka* (3), s. 347(1)(f); *Uganda* (3), s. 37(1)(c), (d).

<sup>103</sup> (3), s. 34(1)(b), (c).

<sup>104</sup> (3), s. 136(1)(d).

<sup>105</sup> (4), s. 38(1)(b); (5), s. 300(1)(b).

<sup>106</sup> (1), s. 86(1), (2).

<sup>107</sup> (1), s. 33(4); (2), s. 328(2).

<sup>108</sup> (2), s. 104(1)(d); (3), s. 312(1) and Schedule 7. According to the Government's report, the \$6,000 threshold in respect of priority payments to employees will soon be raised to \$15,000.

<sup>109</sup> At the state level, limits on preferred wage claims vary from 60 days' wages or an amount of \$100 in *Washington* (55), s. 49.56.010, to three months' wages or \$600 in *Indiana* (19), s. 22-2-10-1. In *Arizona* (7), s. 23-354, the law confers priority to wages not exceeding \$200 for services rendered within 60 days prior to the insolvency proceedings, whereas in *Idaho* (17), s. 45-602, the limit is set at 60 days' wages or \$500. Moreover, in *Rhode Island* (47), s. 28-14-6.1, priority is given to unpaid wages not exceeding \$300 earned within three months.

date of the filing of the petition or the date of the cessation of the debtor's business but only to the extent of \$4,000 for each individual.

**326.** Lastly, it should be mentioned that in some countries, such as *Belarus, Chile, China, Colombia, Democratic Republic of the Congo, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Guinea-Bissau, Hungary, Iraq, Libyan Arab Jamahiriya, Nicaragua, Oman, Panama, Peru, Philippines, Russian Federation, Syrian Arab Republic and Ukraine*, the legislation does not establish a maximum length of service or a maximum amount for privileged wage claims, or information is not available on this point.

### 1.5. Enforceability of privilege against the debtor's assets

**327.** A distinction is often made between general privileges and special privileges, depending on the type of assets against which such privileges may be exercised. Generally speaking, general privileges are enforceable against all of the debtor's assets, whereas special privileges are only enforceable against a specific asset.

**328.** In most countries, wage claims are accorded a general privilege enforceable against all of the debtor's assets, both movable and immovable. This is the case, for instance, in *Brazil*,<sup>110</sup> *Côte d'Ivoire*,<sup>111</sup> *Ecuador*,<sup>112</sup> *Egypt*,<sup>113</sup> *Gabon*,<sup>114</sup> *Mexico*,<sup>115</sup> *Niger*,<sup>116</sup> *Seychelles*<sup>117</sup> and *Venezuela*.<sup>118</sup>

**329.** In some countries, the legislation grants wage claims a general privilege which is nevertheless limited to movable assets. For example, in *Guinea*,<sup>119</sup> the wage claims of employees and apprentices for the year in which the insolvency occurred and the preceding year have priority in respect of the debtor's movable assets only.

<sup>110</sup> (6), s. 102. This is also the case in *Bolivia* (7), s. 1345; *Burkina Faso* (1), s. 117; *Central African Republic* (1), s. 108; *Chad* (1), s. 268; *Congo* (2), s. 92; *Democratic Republic of the Congo* (1), s. 91; *Dominican Republic* (1), s. 207; *Guatemala* (2), s. 101; *Libyan Arab Jamahiriya* (1), s. 60; *Madagascar* (1), s. 77; *Mauritius* (3), ss. 2148, 2152; *Rwanda* (1), s. 102; *Syrian Arab Republic* (1), s. 8; *Togo* (1), s. 99.

<sup>111</sup> (1), s. 33(2).

<sup>112</sup> (3), ss. 2391, 2399.

<sup>113</sup> (1), s. 5.

<sup>114</sup> (1), s. 156.

<sup>115</sup> (2), s. 113.

<sup>116</sup> (1), s. 166.

<sup>117</sup> (2), ss. 2101, 2104.

<sup>118</sup> (1), ss. 158 to 160; (2), s.101; (3), s. 1870.

<sup>119</sup> (1), s. 226.

**330.** Special privileges are often granted to seafarers in respect of the wages for the last voyage, which are enforceable against their vessels, and to masons, carpenters and other construction workers, whose claims are enforceable against the property which they have helped to build or repair, while in the case of farm workers, the preference is enforceable against the harvest.<sup>120</sup> In *Madagascar*,<sup>121</sup> apart from the above categories, special privileges are also granted to assistants employed by domestic workers. In *Argentina*<sup>122</sup> and *Mauritius*,<sup>123</sup> architects, building contractors, masons and other workers enjoy a special privilege over the buildings or other construction works executed for the debtor's account up to the amount of their honoraria, fees or salaries, while in *Bolivia*,<sup>124</sup> transport workers enjoy a privilege over the transported goods.

## **2. Protection of workers' claims by a guarantee institution**

### **2.1. Weaknesses of the privilege system and the need for the revision of [Convention No. 95](#)**

**331.** Over the years, the protection of workers' wage claims in the event of bankruptcy by means of a privilege has not proven to be very satisfactory. Article 11 of Convention No. 95 has been criticized on several grounds: first, it may be without much practical effect where there are not sufficient realizable assets in the bankrupt estate. Secondly, it seeks to provide a relative priority for workers' claims, but fails to guarantee a minimum rank for such claims. Moreover, Article 11 recognizes the possibility of setting a ceiling to the privilege, without establishing a minimum standard of socially acceptable protection. Finally, it does not address the question of wage claims for work performed after the insolvency in situations where the latter does not necessarily involve the closure of the enterprise.<sup>125</sup> It therefore became obvious that the privilege system, no matter how improved or strengthened, would by and large

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<sup>120</sup> This is the case, for instance, in *Djibouti* (1), s. 103; *Guinea* (1), s. 224; *Mali* (1), s. L.116; *Togo* (1), s. 99.

<sup>121</sup> (1), s. 83.

<sup>122</sup> (1), s. 271.

<sup>123</sup> (3), s. 2151.

<sup>124</sup> (7), s. 1349(3).

<sup>125</sup> For a critical analysis of the preference system, see Arturo Bronstein, "The protection of workers' claims in the event of the insolvency of their employer", in *International Labour Review*, Vol. 126, 1987, pp. 715-731. See also the Report of the Meeting of Experts on the Protection of Workers in the Event of the Insolvency of their Employer, MEWPI/1985/D.3/Rev., paras. 29-36.

fall short of ensuring the full and definite settlement of wage debts and that new guarantees for the payment of wage claims were needed.

**332.** In addition, significant developments in national law and practice since the adoption of [Convention No. 95](#) pointed to the necessity to adopt new standards. First, the labour legislation in many countries extended the scope of wages covered by the privilege to cover various bonuses and allowances. Secondly, noticeable progress was also made in respect of the priority granted to workers' claims, which progressively came to be given preference over most other privileges. Thirdly, since 1967, numerous wage guarantee schemes had been established offering protection of workers' claims through the intervention of an independent institution.

**333.** Another objection which progressively gained currency, related to the philosophy underlying the preference system: the sole object of bankruptcy proceedings under the preference system is to arrange for the liquidation of the distressed enterprise and for the sale of its assets for the purpose of satisfying the creditors' claims. Nowadays, however, it is widely accepted that such proceedings should instead be aimed at rescuing enterprises in difficulties, the assumption being that in most cases it is economically and socially preferable to keep the enterprise afloat by separating its fate from that of its owner. Under the influence of the so-called "rescue culture", therefore, the privilege system has come to be seen as not only inadequate in its practical application but also outdated in its conception.

## **2.2. From privileged claims to wage guarantees: [ILO Convention No. 173](#)**

**334.** [Convention No. 173](#) is one of the very few ILO instruments consisting of different parts which may be ratified together or separately. It proposes a distinct set of standards dealing with the protection of workers' claims by means of a privilege and another referring to protection through the intervention of an independent guarantee institution. The dual-thrust instrument is based on a flexible approach permitting member States to choose the system of protection which best corresponds to their needs and interests. When ratifying the Convention, a member State may therefore undertake to apply either the provisions of Part II, dealing with protection by privilege, or those of Part III regulating the protection of workers' claims by means of wage guarantee institutions. Nothing prevents a member which has initially accepted only one of the two parts from subsequently extending its acceptance to the other part.<sup>126</sup>

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<sup>126</sup> For the Conference discussions which preceded the adoption of the Convention, see ILC, 78th Session, 1991, *Record of Proceedings*, pp. 20/1-20/27, 26/2-26/6 and ILC, 79th Session,

**335.** With respect to the privilege system, [Convention No. 173](#) marks a clear improvement over the standards set out in [Convention No. 95](#) in three different respects. First, it defines the minimum coverage of the privilege, namely: (i) workers' claims for wages relating to a prescribed period of not less than three months prior to the insolvency or prior to the termination of the employment; (ii) claims for holiday pay as a result of work performed during the year in which the insolvency or the termination of the employment occurred and in the preceding year; (iii) claims for amounts due in respect of other types of paid absence (e.g. sick leave or maternity leave) relating to a prescribed period which may not be less than three months prior to the insolvency or prior to the termination of the employment; and (iv) severance pay.<sup>127</sup> Secondly, the Convention requires that national laws or regulations must give workers' claims a higher rank of privilege than most other privileged claims, and in particular those of the State and the social security system for arrears in taxes or unpaid contributions.<sup>128</sup> Thirdly, the Convention specifies that whenever national laws or regulations set a ceiling to the protection by privilege of workers' claims, the prescribed amount may not fall below a socially acceptable level, and that it therefore has to be reviewed periodically so as to maintain its value.<sup>129</sup>

1992, *Record of Proceedings*, pp. 25/1-25/40, 30/2-30/8. [Convention No. 173](#) entered into force on 8 June 1995. To date, it has been ratified by 14 member States, nine of which have only accepted the obligations of Part II, three others have only accepted the obligations of Part III and another two have decided to apply the provisions of both parts. It is interesting to note that Australia and Slovakia, although they have so far only accepted the obligations of Part II of the Convention regarding protection of workers' claims by means of a privilege, are already operating wage guarantee schemes. Full indications of ratifying States are given in [Appendix I](#).

<sup>127</sup> Under the terms of the Recommendation, the privilege should also cover overtime pay, commissions and other forms of remunerations, as well as end-of-year and other bonuses relating to work performed during a period prior to the insolvency which should not be less than 12 months, payments due in lieu of notice of termination of employment, and compensation payable directly by the employer in respect of occupational accidents and diseases. Moreover, other claims such as contributions due in respect of national social security institutions or other social protection schemes might also be protected.

<sup>128</sup> The Convention stipulates, however, that where workers' claims are protected by a guarantee institution, the claims so protected may be given a lower rank than those of the State and the social security system.

<sup>129</sup> In this respect, the Recommendation indicates that to establish what constitutes a socially acceptable level, account should be taken of variables such as the minimum wage, the part of wage which is unattachable, the wage on which social security contributions are based or the average wage in industry. Attention should also be drawn to other provisions of the Recommendation addressing the question of the payment of workers' claims which fall due after the insolvency proceedings have been opened, that is when the enterprise is authorized to continue its activities, and also the problem of a special procedure for accelerated payment in case the insolvency proceedings cannot ensure rapid settlement of workers' privileged claims.

**336.** As regards wage guarantee schemes, [Convention No. 173](#) provides that they must cover as a minimum: (i) workers' claims for wages relating to a prescribed period of not less than eight weeks prior to the insolvency or prior to the termination of the employment; (ii) claims for holiday pay as a result of work performed during a prescribed period which may not be less than six months prior to the insolvency or the termination of the employment; (iii) claims for amounts due in respect of other types of paid absence relating to a prescribed period which may not be less than eight weeks prior to the insolvency or prior to the termination of the employment; and (iv) severance pay. The minimum coverage under a wage guarantee scheme is more limited than that afforded by the privilege system, since a guarantee institution offers an assurance of payment which is not present in the case of privilege. The Convention allows for the limitation of guaranteed compensation to a certain amount, but requires such amount not to fall below a socially acceptable level, and to be periodically adjusted so as to maintain its value.

**337.** [Recommendation No. 180](#) highlights the main principles which might govern the operation, management and financing of guarantee institutions; first, they should be administratively, financially and legally independent of the employer. Secondly, they should be financed by compulsory contributions payable by employers, unless they are financed exclusively out of public resources, and the funds so collected should only be used for the purpose of satisfying claims in respect of unpaid wages. Thirdly, payments should be effected irrespective of any outstanding contributions due by the insolvent employer to the guarantee institution.

**338.** It should be mentioned that the standards set out in Part III of the Convention dealing with wage guarantee institutions bear a certain similarity to the provisions of the European Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer. The 1980 Directive requires Member States to put in place an institution guaranteeing to employees whose employer has become insolvent the payment of their outstanding claims to remuneration for a specific period. In order to restrict the duration of the guarantee, Member States are given the choice of three alternative dates marking the beginning of the reference period within which the minimum period of guaranteed remuneration must fall. The Directive also allows Member States to set a ceiling for the liability for employees' outstanding claims, and highlights the operating principles for guarantee



institutions, i.e. financial independence, funding by employers, and liability irrespective of the contributions record.<sup>130</sup>

**339.** On the whole, the partial revision of Article 11 of [Convention No. 95](#) has resulted in a flexible instrument setting considerably higher standards of protection and offering modern responses to the current challenges of regulating corporate insolvency. In the Committee's opinion, [Convention No. 173](#) constitutes a solid and ambitious response to the problems of social protection in the case of insolvency, which have become increasingly topical in the context of a globalized economy and a period of recession. It gives substantive content to the privilege system, introduces new methods of protection in the form of wage guarantee funds, and leaves a wide margin of discretion to member States in the implementation of the standards. The information available shows that many countries, in particular those which have in the past decade gone through market-based structural changes, are in the process of establishing wage guarantee institutions, or are currently engaged in discussions with the social partners with a view to setting up such institutions in the very near future. The Committee also notes that in some cases the technical assistance of the Office has been requested in drafting appropriate laws and regulations or in disseminating relevant information concerning similar experiences in other countries. The Committee has every reason to believe, as explained in [Chapter IX](#) below, that the rate of acceptance of [Convention No. 173](#) will increase significantly in the coming years and requests the Office to increase its efforts to assist member States in devising effective insolvency regimes in line with the standards contained in the Convention.

<sup>130</sup> In September 2002, the European Parliament and the Council adopted Directive 2002/74/EC amending Council Directive 80/987/EEC with a view to adapting its content to new trends in insolvency law in the Member States, and better reflecting other Community directives adopted in the meantime, as well as the recent case law of the Court of Justice. The new Directive proposes a wider definition of insolvency to cover not only bankruptcy or liquidation proceedings, but also other collective insolvency proceedings. It also extends the scope of protection in respect of the employees covered by stipulating that Member States may not exclude part-time workers, workers with fixed-term contracts or workers with a temporary employment relationship within the meaning of the relevant Directives. Moreover, the new Directive seeks to simplify the provisions on the time limit applicable to guaranteed pay claims by laying down a minimum period (three months) and leaving it to Member States to fix a reference date, it being understood that such period does not necessarily refer only to wages due before the reference date, but may also cover claims arising after that date. Finally, the Directive addresses the question of jurisdiction in cases of cross-border insolvencies. In this connection, see also the European Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings, which entered into force in May 2002 and which aims to improve and accelerate insolvency proceedings with cross-border effects. For more, see Pierre Rodière, *Droit social de l'Union européenne*, 2002, pp. 490-494.

**5.1. Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer**

*Article 1*

1. This Directive shall apply to employees' claims arising from contracts of employment or employment relationships and existing against employers who are in a state of insolvency within the meaning of Article 2(1). [...]

*Article 2*

1. For the purposes of this Directive, an employer shall be deemed to be in a state of insolvency where a request has been made for the opening of collective proceedings, as provided for under the laws, regulations and administrative provisions of a Member State, based on insolvency of the employer and involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and the authority which is competent pursuant to the said provisions has (a) either decided to open the proceedings, or (b) established that the employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings. [...]

*Article 3*

Member States shall take the measures necessary to ensure that guarantee institutions guarantee, subject to Article 4, payment of employees' outstanding claims resulting from contracts of employment or employment relationships, including, where provided for by national law, severance pay on termination of employment relationships. The claims taken over by the guarantee institution shall be the outstanding pay claims relating to a period prior to and/or, as applicable, after a given date determined by the Member States.

*Article 4*

1. Member States shall have the option to limit the liability of the guarantee institutions referred to in Article 3.

2. When Member States exercise the option referred to in paragraph 1, they shall specify the length of the period for which outstanding claims are to be met by the guarantee institution. However, this may not be shorter than a period covering the remuneration of the last three months of the employment relationship prior to and/or after the date referred to in Article 3. Member States may include this minimum period of three months in a reference period with a duration of not less than six months. [...]

3. Furthermore, Member States may set ceilings on the payments made by the guarantee institution. These ceilings must not fall below a level which is socially compatible with the social objective of this Directive. When Member States exercise this option, they shall inform the Commission of the methods used to set the ceiling.

(continued...)

(concluded...)

*Article 8a*

1. When an undertaking with establishments in the territories of at least two Member States is in a state of insolvency within the meaning of Article 2(1), the institution responsible for meeting employees' outstanding claims shall be that in the Member State in whose territory they work or habitually work.

2. The extent of employees' rights shall be determined by the law governing the competent guarantee institution.

3. Member States shall take the measures necessary to ensure that, in the cases referred to in paragraph 1, decisions taken in the context of insolvency proceedings referred to in Article 2(1), which have been requested in another Member State, are taken into account when determining the employer's state of insolvency within the meaning of this Directive. [...]

### 2.3. Wage guarantee funds

**340.** Wage guarantee institutions seek to provide a remedy for all employees who would otherwise not recover entitlements by imposing a cost burden on all businesses, including those that are both solvent and responsible. Such schemes were first introduced in Western Europe in the late 1960s and early 1970s, with *Belgium* being the first country to set up a wage guarantee fund in 1967, followed by the *Netherlands* in 1968, Sweden in 1970, Denmark in 1972 and Finland, *France* and *Norway* in 1973. Several other countries, such as Australia, *Austria*, *Czech Republic*, Estonia, *Greece*, *Israel*, *Italy*, Japan, Republic of Korea, Lithuania, Luxembourg, *Poland*, *Slovakia*, *Spain* and Switzerland, also operate wage guarantee institutions.

#### 2.3.1. Scope of the wage guarantee

**341.** As a general rule, all employees may benefit from a wage guarantee scheme. In certain cases, however, persons such as senior managers or close relatives of the insolvent employer are excluded for fear of abuse. In *Austria*,<sup>131</sup> for instance, managerial staff and executive officers who exert a decisive influence over the company's operations, as well as partners with a controlling

<sup>131</sup> (2), s. 1(6). Similarly, the Government of Finland has reported that the wage guarantee under the Pay Security Act does not apply to the managing director of a company, the general partner of a limited partnership or other persons holding managerial positions. In United Kingdom: Isle of Man (14), s. 70, no payment may be made to a person who, at any time during the 12 months preceding the insolvency, was a director of the company, or the beneficial owner of one-half or more of the issued share capital of the company, or of any other company which at that time had control (directly or indirectly) of that company.

influence on the company, are not entitled to receive payment from the Insolvency Compensation Fund (IAG). Similarly, in Switzerland,<sup>132</sup> the scheme for insolvency compensation does not apply to senior management or persons with financial participation in the enterprise, or to their spouses when they are employed in the same enterprise. In Australia,<sup>133</sup> an “excluded employee”, i.e. an employee who was a shareholding executive director of the former employer, a relative of such a director or a relative of the former employer, is not eligible to receive payments under the existing schemes. The term “relative” in this respect means the spouse, parent or remote linear ancestor, son, daughter or remoter issue, or brother or sister of the person. In addition, the Government of *Spain* has indicated at the time of the ratification of [Convention No. 173](#) that it excludes household servants from the application of Part III dealing with the protection of workers’ claims by means of a guarantee institution.

**342.** The wage and other service-related claims covered by guarantee funds vary considerably. With respect to wages, most schemes guarantee the payment of all the components of remuneration, including the basic wage, allowances, bonuses, increments, holiday pay and sick leave pay, as well as compensation arising out of termination of employment, such as severance pay. This is the case, for instance, in the *Czech Republic*,<sup>134</sup> *Israel*<sup>135</sup> and *Poland*.<sup>136</sup> In Australia,<sup>137</sup> payments to eligible claimants cover unpaid wages (including allowances, such as shift allowances and overtime), annual leave, long service leave, payment in lieu of notice and redundancy pay. In addition to these claims,

<sup>132</sup> (4), s. 51(2). In this respect, it is interesting to note that the new Directive 2002/74/EC of 23 September 2002 amending Council Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer provides for the possibility to refuse or reduce the liability of the guarantee institution “in cases where the employee, on his or her own or together with his or her close relatives, was the owner of an essential part of the employer’s undertaking or business and had a considerable influence on its activities”.

<sup>133</sup> See operational arrangements of the Employee Entitlements Support Scheme (EESS) and the General Employee Entitlements and Redundancy Scheme (GEERS), s. 5.1. The GEERS was established in September 2001 to deal with claims lodged in respect of terminations due to insolvency occurring on or after 12 September 2001, while the EESS, which was established in February 2000, continues to apply to claims arising out of terminations due to insolvency from 1 January 2000 up to and including 11 September 2001. The operational arrangements of these schemes may be accessed at <http://www.workplace.gov.au/>. Similarly, in the United States, some state laws specifically provide that no officer or director in the case of a corporation, no partner in the case of a partnership and no owner in the case of a sole proprietorship may be considered an employee for the purposes of a wage guarantee fund; see, for instance, *Maine* (25), s. 632(1).

<sup>134</sup> (5), s. 3(b). See also *Denmark* (1), s. 2(1); *Republic of Korea* (2), s. 6(2); *Luxembourg* (2), s. 46(2); *United Kingdom: Falkland Islands* (9), s. 100(3), and *Isle of Man* (14), s. 67(3).

<sup>135</sup> (2), s. 180; (1), s. 1.

<sup>136</sup> (2), s. 6(2); (3), s. 1.

<sup>137</sup> See operational arrangements of the EESS and the GEERS, s. 6.1.

the legislation in *Austria*,<sup>138</sup> *Norway*,<sup>139</sup> *Slovakia*<sup>140</sup> and *Sweden*<sup>141</sup> also guarantees any necessary expenses incurred in prosecuting such claims. In contrast, in *Finland*, *Greece* and *Switzerland*,<sup>142</sup> the legislation does not guarantee the payment of severance benefits, while in *Spain*,<sup>143</sup> only indemnity for dismissal is guaranteed.

### 2.3.2. Limits of the wage guarantee

**343.** In a manner comparable to the privilege system, payments guaranteed by a wage fund are subject to limitations with regard to the length of service or a prescribed amount, or a combination of these two criteria. For instance, the protected period of service is limited to three months in the *Czech Republic*,<sup>144</sup> *Finland*,<sup>145</sup> *Italy*,<sup>146</sup> *Poland*<sup>147</sup> and *Slovakia*<sup>148</sup> and to six months in *Luxembourg*,<sup>149</sup> *Norway*<sup>150</sup> and *Switzerland*.<sup>151</sup> In contrast, in *Austria*,<sup>152</sup> the period of protected service appears to be unlimited, with the only limitation being that compensation is payable for wages which became due more than six months before the bankruptcy or insolvency proceedings were instituted. In *Australia*,<sup>153</sup> under the Employee Entitlements Support Scheme (EESS), protected entitlements include up to four weeks' unpaid wages, four weeks'

<sup>138</sup> (2), s. 1(2).

<sup>139</sup> (3), s. 1.

<sup>140</sup> (4), s. 64b(2)(i).

<sup>141</sup> (2), ss. 7, 8.

<sup>142</sup> (5), s. 5(2).

<sup>143</sup> (1), ss. 26(1), 33(1), (2), (8), 50, 51, 52(c).

<sup>144</sup> (5), s. 5(1). An employee may only file a claim for wage arrears against the same employer once in a period of three years. Moreover, in *Greece* (5), s. 5(3), and *Slovenia* (2), s. 19, guaranteed payment is also limited to unpaid wages for a period of three months prior to the date of termination of employment. Similarly, in the Republic of Korea (2), s. 6(2); (3), s. 10(1), wages of the final three months and the retirement allowance of the final three years are guaranteed by the Wage Claim Guarantee Act.

<sup>145</sup> (2), s. 5.

<sup>146</sup> (2), s. 2(1).

<sup>147</sup> (2), s. 6(2).

<sup>148</sup> (6), s. 22(4). Wage claims not settled by the guarantee fund, and which arose in the last three years prior to the declaration of the bankruptcy order, remain privileged debts of the first category and are satisfied before taxes and social security contributions.

<sup>149</sup> (2), s. 46(2).

<sup>150</sup> (2), s. 9-3; (3), s. 1.

<sup>151</sup> (3), s. 219.

<sup>152</sup> (2), s. 1(3)(2b).

<sup>153</sup> See operational arrangements of the EESS and the GEERS, s. 6.1.

annual leave, four weeks' redundancy pay, five weeks' pay in lieu of notice and 12 weeks' long-service leave. In contrast, under the General Employee Entitlements and Redundancy Scheme (GEERS), there is no maximum limit as regards the period in relation to which wage claims have accrued, with the exception of the redundancy pay entitlement, which is limited to eight weeks. In the United Kingdom,<sup>154</sup> guaranteed payment covers pay arrears up to eight weeks and holiday pay not exceeding six weeks. In the United States,<sup>155</sup> at the state level, limits normally vary from two weeks to two months.

**344.** In some cases, guaranteed compensation may not exceed a prescribed cash amount or a limit defined by reference to the national minimum wage or the amount used for the assessment of social security contributions. For example, in *Norway*,<sup>156</sup> the wage guarantee fund does not cover claims in excess of three times the basic national insurance amount which is adjusted annually. In *Spain*,<sup>157</sup> the guaranteed payment may not exceed twice the minimum daily wage rate multiplied by the total number of unpaid days, up to a maximum of 120 days. In *Austria*,<sup>158</sup> the maximum compensation payable by the fund may not exceed twice the maximum contributory basis for the general social security scheme. This amount is reviewed annually to reflect changes in pension levels. In *Switzerland*,<sup>159</sup> insolvency compensation is paid for wage claims up to a monthly ceiling equivalent to the maximum earnings that are subject to employment injury insurance contributions. In the *Czech Republic*,<sup>160</sup> the total amount of wage arrears paid to an employee in a month may not exceed one-and-a-half times the national average wage in the preceding calendar year, as

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<sup>154</sup> (1), s. 184(1). This is also the case in the Falkland Islands (9), s. 100(3)(a), (c), and Isle of Man (14), s. 67(3)(a), (c).

<sup>155</sup> For instance, in *Maine* (25), s. 632, the Wage Assurance Fund covers unpaid wages for a maximum of two weeks, while in *Oregon* (45), s. 652.414, the Wage Security Fund covers the unpaid amount of wages earned within 60 days before the date of the cessation of business to the extent of \$4,000.

<sup>156</sup> (3), s. 1. Similarly, in *Italy* (2), s. 2(2), payments made by the Wage Guarantee Fund (CIG) may not exceed a sum equal to three times the maximum amount of the extraordinary monthly income supplement net of social security and assistance deductions.

<sup>157</sup> (1), s. 33(1).

<sup>158</sup> (2), s. 1(3).

<sup>159</sup> (4), s. 52.

<sup>160</sup> (5), s. 5(2). Similarly, in *Poland* (2), s. 6(2) the total payment financed by the fund for a period of one month may not exceed the level of average monthly remuneration in the previous quarter, while in *Slovakia* (6), s. 22(5) compensation paid out by the guarantee fund must not be higher than three times the average monthly wage in the first semester of the previous calendar year.

determined annually by ministerial decree. Moreover, in Estonia<sup>161</sup> and Lithuania,<sup>162</sup> the amount of the worker's outstanding claims for wages covered by the guarantee institution is limited to three minimum monthly wages.

**345.** In *Israel*,<sup>163</sup> the guaranteed benefit to be paid in case of the bankruptcy or winding up of companies may not exceed, in respect of each employee, the average wage multiplied by ten. In Finland,<sup>164</sup> the maximum amount is determined by decree having regard to general pay levels and is currently fixed at FIM90,000, while in Sweden<sup>165</sup> the ceiling for claims is fixed by law at SEK100,000. In Australia,<sup>166</sup> there is a \$20,000 cap on the amount any individual may receive under the EESS, whereas the GEERS sets an income cap (currently fixed at \$75,000 but indexed annually), it being understood that employees with higher earnings may receive payments as if they earned a rate equivalent to the scheme's income cap. In the United Kingdom,<sup>167</sup> the total amount payable to an employee under the wage guarantee scheme may not exceed £210 in respect of any one week. In the Republic of Korea,<sup>168</sup> the maximum guaranteed amount for unpaid wages varies in consideration of the worker's age and is currently set at 1 million won for workers less than 30 years of age and at 1.45 million won for workers over 45 years of age.

### **2.3.3. Organization, management and financing of wage guarantee institutions**

**346.** The operation of wage guarantee schemes is based on the same principles governing other social security schemes, namely obligatory participation, wage-based contributions, administration by autonomous bodies and collective responsibility of the community of entrepreneurs for the business risk. Acting usually as secondary, not principal debtors, wage guarantee institutions pay workers' claims only when there are no assets available in the insolvent's estate. Any sums advanced by a wage guarantee fund may then be

<sup>161</sup> (4), s. 20(3). Similarly, in Slovenia (2), s. 19, the wage guarantee covers claims for unpaid wages up to a maximum of three minimum wages, claims in respect of unused annual leave up to one-half of the minimum wage and claims in respect of severance pay up to one minimum wage. In Luxembourg (2), s. 46(2), the payment guaranteed by the Employment Fund is limited to six times the minimum social wage.

<sup>162</sup> (4), s. 5(1).

<sup>163</sup> (2), s. 183.

<sup>164</sup> (2), s. 9. See also Denmark (1), s. 3.

<sup>165</sup> (2), s. 9.

<sup>166</sup> See operational arrangements of the EESS and the GEERS, s. 6.4.

<sup>167</sup> (1), s. 186(1).

<sup>168</sup> (2), s. 6(2); (3), s. 6, and table 2.

recovered through an ordinary insolvency procedure. This right of subrogation is protected by the same privilege as the original wage debt.

**347.** In most countries, wage guarantee funds are operated by independent bodies set up within existing administrative institutions. In *Austria*,<sup>169</sup> for instance, the Insolvency Compensation Fund (IAG) operates under the authority of the Federal Ministry for Labour and Social Affairs, while in *Norway*,<sup>170</sup> the State Guarantee Fund is managed by the Directorate of Labour Inspection. Similarly, in *Spain*,<sup>171</sup> the Wage Guarantee Fund (FOGASA) is an autonomous institution affiliated with the Ministry of Labour and Social Security. In *Australia*,<sup>172</sup> safety net schemes protecting unpaid employee entitlements are administered by the Department of Employment and Workplace Relations. In *Greece*,<sup>173</sup> the management of the assets of the wage guarantee fund is entrusted to the board of directors of the Workforce Employment Organization (OAED) of which half of the members are employers' and workers' representatives. In *Poland*,<sup>174</sup> the Guaranteed Workers' Benefits Fund is a public institution endowed with legal personality and managed by a board of six members composed of representatives of employers' (two-thirds) and workers' (one-third) organizations. In *Switzerland*<sup>175</sup> the insolvency compensation scheme is integrated into the system of unemployment insurance. In *Israel*,<sup>176</sup> wage guarantee benefits are paid out by the National Insurance Institute which is placed under the general supervision of the Minister of Labour and Social Welfare. In the *Czech Republic*,<sup>177</sup> claims for wage arrears are processed by the local labour office competent for the district in which the headquarters of the

<sup>169</sup> (2), s. 13(1). This is also the case in the Republic of Korea (2), s. 17(1).

<sup>170</sup> (4), ss. 4-1, 4-2. In Finland (2), ss. 3, 10, 11, the pay security scheme is administered by the Ministry of Labour through the offices of manpower districts, while in Sweden (2), ss. 22, 24, 25, the wage guarantee is paid by the county administrative board in the county in which the district court dealing with the bankruptcy matter is located. Moreover, in Denmark (1), s. 11, the administration of the Employees' Guarantee Fund is entrusted to the Labour Market Supplementary Pension Service.

<sup>171</sup> (1), s. 33(1); (13), s. 1(1).

<sup>172</sup> See operational arrangements of the EESS and the GEERS, s. 10.1.

<sup>173</sup> (5), s. 3(1), 4(1).

<sup>174</sup> (2), ss. 12, 15; (4), ss. 6, 10, 11.

<sup>175</sup> (4), s. 57. Similarly, in Estonia (4), ss. 21(1), 33(1), the wage guarantee fund is part of the Unemployment Insurance Fund.

<sup>176</sup> (2), s. 8(c). Similarly, in the United Kingdom (1), s. 182; (7), s. 161(1), protected employee entitlements are paid from the National Insurance Fund (NIF), while in *Italy* (5), s. 2, the fund is established in the National Social Security Institution (INPS).

<sup>177</sup> (5), ss. 4(2), 6, 8, 10.



insolvent enterprise, the place of the business activity or the private address of the insolvent employer is located.

### 5.2. The feasibility of setting up wage guarantee institutions

The wage guarantee institutions shift the individual employer's business risk to what might be called the "community of employers" and hence make it possible for the service-related claim to be paid in all cases through a third party which is by definition solvent and acts as an insurer of the "risk of insolvency". [...] In the final analysis, the principle of insurance by the community of employers against the risk of individual insolvency is not very different from the principle of occupational accident insurance financed exclusively by the employer's contributions. Nor is it very different from the collective and compulsory professional liability insurance organized by some professions, such as that of the notaries, or from the collective guarantee established by banks in some countries to indemnify third parties for any prejudice suffered through the dishonesty or malpractice of any one member of the profession. [...] It remains to be seen whether the establishment of wage guarantee institutions, which have so far been set up in industrialized countries with mature social security systems, is feasible in other countries as well. The fundamental problem to be taken into account concerns the great inter-country differences as regards the functioning of social security institutions and, in particular, the capacity for administering these institutions. A further point to be borne in mind is that social security is usually an institution that proceeds by progressive steps, and it is not without reason that some argue that, before a wage guarantee institution is set up, it would be desirable to strengthen the others, such as old-age pension or health insurance schemes, which cover more universal social risks. [...] While there are countries which are now capable of organizing a wage guarantee institution, this is probably not the case everywhere. Besides, there are economic considerations, political factors and questions of social sensitivity that do not carry the same weight in all countries. It may be, on the one hand, that in some countries the economic situation is so flourishing that the risk of bankruptcies is quite limited, and if bankruptcies do occur they affect so few workers that the problem of the non-payment of workers' claims – even if it affects a few individuals – will not cause any social repercussions. On the other hand, it may also happen in other countries that the number of bankruptcies is so high that the financing of a wage guarantee might involve an intolerably high cost. In such a case the problem will be fraught with social consequences and will be very difficult to deal with. Finally, in certain societies it may be that the level of social sensitivity to the problem of unpaid wage claims is very low, in which case the State will probably consider it unnecessary to organise a wage guarantee institution, even if it is technically and financially capable of doing so.

Source: Arturo Bronstein, "Comparative study" in Edward Yemin and Arturo Bronstein (eds.): *The protection of workers' claims in the event of the employer's insolvency*, ILO, 1991, pp. 52-54.

**348.** As regards financing, wage funds are, in principle, financed exclusively by compulsory contributions payable by employers. This is the situation in *Austria*,<sup>178</sup> *Denmark*,<sup>179</sup> *Finland*,<sup>180</sup> *Norway*<sup>181</sup> and *Poland*.<sup>182</sup> In other countries, financing is also provided through public funds. In *Slovakia*,<sup>183</sup> for instance, the fund is supported by employers' contributions and a state subsidy of an equal amount. Similarly in *Greece*,<sup>184</sup> the Ministry of Labour subsidizes the wage guarantee fund with an annual amount of €1.5 million. Yet in other countries, such as *Slovenia*,<sup>185</sup> the wage guarantee institution is financed solely by the state budget. In *Australia*,<sup>186</sup> both safety net schemes are funded from general taxation with the only difference being that whereas the EESS was established on the basis that state governments would contribute 50 per cent of the funds, the GEERS is fully funded by the Commonwealth Government. More generally, guarantee funds also draw on revenues other than compulsory contributions and state subsidies, such as the sums recovered from employers for settled claims, interest on the financial assets deposited in banks, or penalties and fines received for the late payment of contributions or the violation of the fund's regulations.

**349.** Contributions depend on wage income, but may not exceed a certain limit, which is often determined on the basis of social security contributions. Contributions may be adjusted according to the financial situation of the fund; they may rise at times of economic crisis and a high number of bankruptcies, or fall when the general economic climate improves. In *Austria*,<sup>187</sup> for instance,

<sup>178</sup> (2), s. 12(1).

<sup>179</sup> (1), s. 9. The amount of annual contributions may be adjusted by ministerial decision, while unpaid contributions with accrued interest at the rate of 1 per cent for every month may be recovered through distraint.

<sup>180</sup> (2), s. 31.

<sup>181</sup> (3), s. 2.

<sup>182</sup> (2), s. 17.

<sup>183</sup> (5), s. 77a(2), (4), (5). The situation is similar in *Lithuania* (4), s. 4(1).

<sup>184</sup> (6), s. 16(2).

<sup>185</sup> (2), ss. 13, 14. According to the Government's report, under the Guarantee Fund Act, part of the funding should also be provided by employer contributions, but this has not yet been implemented in practice.

<sup>186</sup> See operational arrangements of the EESS, s. 6.8, and operational arrangements of the GEERS, s. 9.

<sup>187</sup> (2), s. 12(1), (2). The rate is currently set at 0.7 per cent of the general basis for the overall social security contribution, while in *Slovakia* (5), s. 128a(1) the monthly contribution is fixed at 0.25 per cent of the assessment base. Similarly, in *Italy* (2), s. 4(1); (5), s. 2, the employers' contribution is set at 0.05 per cent of the remuneration used for the calculation of compulsory unemployment insurance, and may be increased or decreased by decree of the

contributions take the form of a supplement to employers' unemployment insurance contributions. The rate of this supplement, which is fixed each year by ministerial ordinance having regard to the balance of accounts of the fund, may be increased if, according to preliminary estimates, the available assets are not sufficient to cover the foreseeable expenditure of the current year, or are lowered if estimates show a surplus in excess of 20 per cent of average expenditure in the previous and current year. In *Greece*,<sup>188</sup> the employer's contribution, which is currently set at 0.15 per cent of the worker's overall earnings, may be modified by common decision of the Ministers of Labour and National Economy upon the recommendation of the institution administering the fund.

**350.** Wage guarantee schemes may, however, take different forms. In *Belarus*,<sup>189</sup> for instance, the national legislation requires every employer to set up a reserve wage fund in order to ensure the payment of wages and other compensation payments in the case of insolvency or bankruptcy, liquidation or the termination of activities. The creation of such a fund is based on profits remaining at the disposal of an enterprise after the payment of taxes up to an amount equal to 25 per cent of the annual wage bill. Similar legislation is in force in *Kyrgyzstan*,<sup>190</sup> providing for the establishment of wage reserve funds on the basis, to the level and in accordance with the procedure which may be provided for by a legislative act or a collective agreement. In the *Dominican Republic*<sup>191</sup> and *Mozambique*,<sup>192</sup> in the absence of a unified wage guarantee institution, the Labour Code stipulates that all enterprises must possess an insurance policy with wage claims coverage. Finally, in the case of *Argentina*,<sup>193</sup> mention may be made of the 1986 Act providing for the establishment of a wage

Minister of Employment and Social Security according to the financial situation of the fund. See also *Poland* (2), ss. 13, 17, 18, and *Spain* (1), s. 33(5); (13), s. 12(1).

<sup>188</sup> (6), s. 16(2).

<sup>189</sup> (1), s. 76; (3), ss. 1, 3, 5.

<sup>190</sup> (1), s. 236(1), (2).

<sup>191</sup> (1), ss. 465, 466. According to s. 738, the guarantee must be regulated by a tripartite agreement, but such an agreement has not yet been concluded.

<sup>192</sup> (1), s. 58(3).

<sup>193</sup> See Act No. 23.473 of 22 December 1986 concerning the establishment of a wage guarantee fund.

guarantee fund, which has nevertheless not yet entered into force, since implementing legislation has not been enacted.

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**351.** In the light of the above, the Committee concludes that the privileged protection accorded to workers' wage claims in the case of the bankruptcy of the employer appears to be, on the whole, a standard feature of the general labour legislation of nearly all member States. Numerous countries have gone even further than the largely permissive language of Article 11 in conferring preferential treatment to employment-related claims other than wages, granting to wage claims absolute priority over all other privileged debts, including those of the State and the social security system, and, in some cases, guaranteeing the settlement of workers' wage claims through a wage guarantee scheme.

**352.** In law and practice the large majority of countries therefore seem to have progressively departed from the generally worded provisions of Article 11 of [Convention No. 95](#) and moved towards the adoption of more specific standards, which often reflect the principles and rules contained in [Convention No. 173](#). Indeed, the Committee considers that [Convention No. 173](#) contains the most relevant standards in relation to the protection of workers' claims in the event of the employer's bankruptcy or insolvency and firmly encourages member States to consider the ratification of this instrument in the very near future. Designed as a dual thrust instrument which allows for a considerable measure of flexibility, [Convention No. 173](#) strengthens the privilege system while exploring new means of protection in the form of wage guarantee institutions.

**353.** It should be recalled, however, that, whether there may be considerable advantages in setting up wage guarantee institutions, these are no panacea to the problems of corporate insolvency. They, of course, offer an assurance of payment which is absent under the privilege system, but they are subject to limitations, in terms of maximum length of service and the maximum amount protected; they do not totally replace the traditional bankruptcy procedures of liquidating assets and settling priority debts according to the established order of distribution; and they presuppose healthy labour institutions and sound management, and as such may not be readily applicable in many contexts. Having said that, the Committee believes that, at a time of growing uncertainty and gloomy economic forecasts for the global economy, as recently been confirmed and amplified by some of the most serious corporate bankruptcies of all times, the need for enhanced protection of worker's earnings for work already performed is more pressing than ever and, in this respect, the significance of [Convention No. 173](#) and [Recommendation No. 180](#) can hardly be overemphasized.

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## CHAPTER VI

### PERIODICITY, TIME AND PLACE OF WAGE PAYMENT

#### 1. The regular payment of wages

**354.** Article 12, paragraph 1, of [Convention No. 95](#) provides that wages shall be paid regularly and that, except where other appropriate arrangements exist which ensure the payment of wages at regular intervals, the intervals for the payment of wages shall be prescribed by national laws or regulations or fixed by collective agreement or arbitration award. Paragraph 4 of the Recommendation specifies that the maximum intervals for the payment of wages should ensure that wages are paid not less than twice a month at intervals not exceeding 16 days in the case of workers whose wages are calculated by the hour, day or week, and not less than once a month in the case of employed persons whose remuneration is fixed on a monthly or annual basis.<sup>1</sup>

**355.** The rationale underlying these provisions is to discourage long wage payment intervals and thus to minimize the likelihood of indebtedness among the workers. In fact, the quintessence of wage protection is the assurance of a periodic payment allowing the worker to organize his everyday life with a reasonable degree of certainty and security. Inversely, the delayed payment of wages or the accumulation of wage debts clearly contravene the letter and the spirit of the Convention and render the application of most of its other provisions simply meaningless. In the following paragraphs, the Committee will first look into the current context with respect to some of the most traumatic and demoralizing experiences of wage arrears, focusing especially to the countries of

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<sup>1</sup> The initial Office proposal required “wages to be paid regularly at such intervals as will minimise the likelihood of indebtedness among the workers”. This provision was amended at the first Conference discussion to make reference to such intervals as are determined by law or collective agreement; see ILC, 31st Session, 1948, *Record of Proceedings*, pp. 462-463. At the second Conference discussion, the deletion of Paragraph 4 of the Recommendation was proposed on the grounds that it was inappropriate to indicate in an international instrument the nature of provisions to be included in collective agreements, and also that the weekly or semi-monthly pay periods referred to in the Paragraph were not customary in certain parts of the world. This amendment was finally rejected, while another amendment seeking to render the expression “twice a month” sufficiently precise by adding the words “at intervals not exceeding sixteen days” was adopted; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 513.

Central and Eastern Europe, and then review the national law and practice with respect to wage intervals.

### 1.1. Deferred payment of wages

**356.** Over the past five years, practically all the observations formulated by the Committee in respect of [Convention No. 95](#) have referred to problems of wage arrears and the failure of governments to ensure the regular payment of wages in accordance with Article 12, paragraph 1, of the Convention. Similarly, for the past ten years, the Conference Committee on the Application of Conventions and Recommendations (CCACR) has regularly examined individual cases relating to grave situations of wage arrears. In addition, in the past decade, the ILO Governing Body has dealt with nine representations made under article 24 of the ILO Constitution alleging non-observance of Convention No. 95, mostly in respect of the delayed or non-payment of wages.<sup>2</sup>

**357.** The accumulation of huge amounts of wage arrears and unpaid wages has become one of the most alarming and persisting phenomena of the post-communist transition of many Central and Eastern European countries towards market-based economies. The pattern of wage arrears experienced previously was generally confined to certain industries or areas, and was often related to companies facing occasional liquidity constraints or problems of insolvency, and sectors affected by conflicts, crises or adverse economic conjuncture either domestically or internationally. By contrast, what in Central and Eastern Europe has been labelled the “wage crisis” over the past ten years is

<sup>2</sup> See, in reverse chronological order, the representation alleging non-observance by the *Czech Republic* of [Convention No. 95](#) made by the Czech-Moravian Confederation of Trade Unions, March 2000, GB.277/18/2; representation alleging non-observance by the *Republic of Moldova* of Convention No. 95 made by the General Federation of Trade Unions of the Republic of Moldova, November 1999, GB.276/17/2; representation alleging non-observance by the *Russian Federation* of Convention No. 95 made by Education International and the Education and Science Employees’ Union of Russia, March 1997, GB.268/15/3 and [GB.270/15/5](#); representation alleging non-observance by *Venezuela* of Convention No. 95 made jointly by several Venezuelan trade unions, November 1996, GB 267/16/1 and GB.268/14/9; representation alleging non-observance by *Congo* of Convention No. 95 made by the Trade Union Confederation of Congo Workers, March 1996, GB.265/13/1 and GB.268/14/6; representation alleging non-observance by *Nicaragua* of Convention No. 95 made by the Latin American Central of Workers, November 1994, GB.261/14/11 and GB.264/16/3; representation alleging non-observance by *Gabon* of Convention No. 95 made by the Federation of Miners, Oil and Other Workers and the International Organization of Energy and Mines, November 1994, GB.261/14/10; representation alleging non-observance by *Congo* of Convention No. 95 made by the International Organization of Energy and Mines, November 1994, GB.261/14/8 and GB.265/12/6; representation alleging non-observance by *France* of Convention No. 95 made by the General Confederation of Labour “*Force Ouvrière*”, March 1994, GB.259/15/30.



spread across all branches of economic activity, including the energy sector, mining, manufacturing and agriculture, and has proven particularly tenacious over time, as if it is part of a rooted “culture of non-payment”. In the *Russian Federation*, according to latest information communicated by the Government, wage arrears stood at 29.9 billion roubles (around US\$1 billion), affecting sectors such as industry, agriculture, construction, public utilities and transport. In *Ukraine*, according to a recent ILO study, 69 per cent of all factories reported that they had great difficulties in paying wages. Three out of every five factories, or 59 per cent, had not paid contractually agreed wages in all or in part, and on average they had not paid wages for almost six weeks.<sup>3</sup> In the *Republic of Moldova*, as another ILO study reveals, the delay observed in the payment of wages ranges from two months to two years, with most enterprises resorting to barter by replacing cash wages with manufactured products.<sup>4</sup> Research reports further show that in *Bulgaria* the volume of wage debts in non-state owned enterprises increased over seven times in the period 1991-96 and almost doubled from 1997 to 1999, while unpaid/delayed wages in the public sector now represent 2.5 per cent of the country’s GDP.<sup>5</sup> The wage arrears of state enterprises in *Belarus* rose from US\$2 million in 1994 to US\$42 million in 1996.<sup>6</sup> Similarly, in *Kazakhstan*, there has been a massive build-up of payment arrears, with the total of inter-enterprise arrears, including wage debts, standing at 38 per cent of GDP in 1996.<sup>7</sup> Significant wage and pension arrears are also reported in other countries, such as *Tajikistan*, *Turkmenistan* and *Uzbekistan*.<sup>8</sup>

**358.** Experts tend to attribute the problem to several factors, such as the collapse of demand, the decline of output and employment in large enterprises, the poor supervision of managerial conduct and lax government controls in state-owned firms, heavy taxation, and strict anti-inflationary monetary policies. Whatever the intricate causes of wage arrears, it is clear that the practice of

<sup>3</sup> See Guy Standing and László Zsoldos, *Worker insecurities in Ukrainian industry: The 2000 ULFS*, ILO, 2001, pp. 36-45. According to information provided to the Conference Committee on the Application of Standards in 2001, the total amount of wage arrears as of May 2001 was 1.3 times the monthly wage mass of all workers and affected more than 5 million workers; see ILC, 89th Session, 2001, *Record of Proceedings*, p. 19 Part 2/59.

<sup>4</sup> See *République de Moldova: Analyse de la flexibilité et de la sécurité de la main-d'oeuvre dans les entreprises*, ILO, Oct. 2001 (in print).

<sup>5</sup> See Vassil Tsanov and Temenuzka Zlatanova, “Non-payment of wages in Bulgaria”, Research paper presented at the Subregional Tripartite Conference on the Protection of Wages Including Wage-Guarantee Funds in Central and Eastern Europe, Sofia, 9-10 November 2001 (unpublished).

<sup>6</sup> See *Belarus: Prices, markets and enterprise reform*, World Bank, 1997, p. 59.

<sup>7</sup> See *Kazakhstan: Living standards during the transition*, World Bank, 1998, p. 4.

<sup>8</sup> See Emine Gürgen et al., *Economic reforms in Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan and Uzbekistan*, International Monetary Fund, 1999, p. 21.

delaying, diverting or otherwise withholding wage payment is part of a vicious circle that breeds the parallel economy, black-market activities and corruption, while carrying serious social consequences such as malnutrition, diseases and dropping out of school, because of the growing impoverishment of the population. All available surveys point to a marked deterioration of living standards as a result of the persistent non-payment of wages. In most cases, household consumption has declined significantly, life expectancy has dropped dramatically, especially for men, morbidity rates have increased and poverty indicators have generally worsened. The population of *Ukraine* has shrunk by more than 2 million people in less than a decade in the wake of a sharp decline in male life expectancy attributed to the stress of adjustment and income insecurity among young and middle-aged men. Similarly, in the *Russian Federation*, male life expectancy fell dramatically between 1992 and 1994 from 62 to 57 years of age, with the evidence showing that the rise in male middle-aged death rates are primarily alcohol-related.<sup>9</sup>

**359.** Another dimension of the problem is the very low level of wages, which mean that even many of those who receive their wages in full and on time are not much better off than those who are not paid at all, since wages are so low and make a relatively small contribution to the subsistence of households. Analysts have noticed a mass return to subsistence agriculture – in 1996 about 90 per cent of potatoes and 80 per cent of vegetables consumed in the *Russian Federation* were home-grown – as a result of the inadequate levels of cash income and increasing demonetization.<sup>10</sup> The problem of the non-payment of wages therefore only serves to magnify the equally disturbing trend of derisive wage levels practised in most transition economies.<sup>11</sup> In *Bulgaria*, where the fall in real wages has been particularly dramatic, by early 1998 real average wages had fallen to only 35 per cent of their 1990 level.<sup>12</sup>

<sup>9</sup> See Simon Clarke, "Poverty in Russia", in *Problems of Economic Transition*, Vol. 42, Sep. 1999, p. 13; Guy Standing, *Global labour flexibility – Seeking distributive justice*, 1999, p. 250; Guy Standing and László Zsoldos, *Worker insecurities in Ukrainian industry: The 2000 ULFS*, ILO, 2001, p. 1.

<sup>10</sup> It is indicative that the statutory minimum wage in the Russian Federation in 1996 was \$13 per month, and 64 per cent of households reported a total income per head below the official subsistence minimum of \$66 per month; see Simon Clarke, "Trade unions and the non-payment of wages in Russia", in *International Journal of Manpower*, Vol. 19, 1998, p. 84.

<sup>11</sup> It has been estimated, for instance, that in the Russian Federation, even if they were paid their wages in full, fewer than 25 per cent of two-earner families would earn enough to support two children above the minimum subsistence level; see Simon Clarke, "Poverty in Russia", in *Problems of Economic Transition*, Vol. 42, Sep. 1999, p. 23.

<sup>12</sup> See Vassil Tzanov and Daniel Vaughan-Whitehead, *Republic of Bulgaria: For a new incomes policy and strategy*, ILO, 1998, p. 11.

### 6.1. Breaking the circle of non-payment

The first priority is undoubtedly to restore a monetary economy and to halt as soon as possible the expanding barter trade. The vicious circle of inter-enterprise debts must also be interrupted. Even if the barter process might appear as a good solution in the short term, its generalization to the whole economy could lead to uncontrollable movements in which workers are generally the main victims. Priority should also be given to the payment of wages, and should be supported by the banking system, the whole process being closely monitored by the government. Bankruptcy decisions should also be taken in a more systematic way by the government – and also supported by the trade unions – in unprofitable enterprises not paying wages and social contributions for months, where restructuring measures could not much help to improve results. [...] It is also important to reduce taxation in order to help enterprises to increase their capital assets and improve their production capacity. This would put employers in a better position also to pay taxes and social contributions. [...] This series of measures clearly requires a multi-stranded action programme on the part of authorities. More labour inspection is also needed. In many regions of the Russian Federation and Ukraine teams of inspectors have been created in order to analyse in detail enterprise conditions and responsibilities. Legislative action is also needed on several fronts: the prioritization of wage payment, the responsibility of employers, monopolies, indebtedness and the banking system, bankruptcy, etc. The trade unions have a crucial role to play in pressuring governments to be more active on this issue and insisting on the full payment of wages arrears. Tripartite discussions should also be promoted between the government and social partners on the non-payment of wages. It is worth noting that whenever this serious problem has finally induced the authorities to take action, the resulting measures have almost always been taken unilaterally: the trade unions and employers' organizations are usually not consulted. Considering the extent of this phenomenon in some countries, it is time to involve all the social partners more actively in this process.

Source: Daniel Vaughan-Whitehead: "Wage policy reforms in Central and Eastern Europe: A first assessment (1990-96)", in Daniel Vaughan-Whitehead (ed.): *Paying the price – The wage crisis in Central and Eastern Europe*, ILO, 1998, pp. 64-65.

**360.** However, the problem of the non-payment or delayed payment of wages is not limited to the transition countries in Central and Eastern Europe or to the former Soviet Republics. The public attention paid over the past decade to the difficulties encountered by these countries should not distract from the fact that similar wage payment problems plague national economies in other regions of the world, notably in Africa and Latin America. The information available shows that the situation is particularly serious in *Congo*, where wage arrears have reached 220 billion CFA francs and the delay in wage payment varies from 18 to 22 months.<sup>13</sup> In the *Central African Republic*, employees in the public

<sup>13</sup> It may be recalled that in 1995 the Trade Union Confederation of Congo Workers (CSTC) made a representation under article 24 of the Constitution alleging non-observance by *Congo* of [Convention No. 95](#) on account of the accumulated wage arrears in the public sector and

sector reportedly receive their salaries with a 16-month delay, while municipal workers in Bangui have not been paid for the last 26 months.<sup>14</sup> Furthermore, the Committee has received comments from the Zambia Congress of Trade Unions (ZCTU) pointing out that wages have not been paid in most local authorities for periods ranging from two to 19 months, affecting close to 10,000 workers.<sup>15</sup> According to other accounts, in *Chad*, three months' wages are owed to public employees working in the health care and education sectors, while in *Comoros*, according to information communicated by the Union of Autonomous Comoran Workers' Organizations (USATC), the pay of public employees in certain areas is 20 and even 30 months in arrears.<sup>16</sup> As regards the situation in Latin America, there have been numerous observations by workers' organizations alleging abuses in the payment of wages in *Argentina*,<sup>17</sup> *Colombia*,<sup>18</sup> *Costa Rica*<sup>19</sup> and the *Dominican Republic*,<sup>20</sup> while in the case of *Bolivia*<sup>21</sup> and *Brazil*<sup>22</sup> slave labour practices have been denounced, including the non-payment of wages, especially in rural areas.

**361.** Occasionally, wage debts are settled by offering consumer goods or promissory notes in lieu of cash to the workers concerned. According to an ILO study carried out in five newly independent countries of the former Soviet Union, the proportion of respondents reporting wage difficulties ranged from a

the dismissal of thousands of civil service workers without a final settlement of their wages or payment of the indemnities for dismissal. In its conclusions, the tripartite committee set up to examine the representation recalled that a government that ratifies the Convention is required not only to ensure that it is applied by private enterprises, but also to apply it scrupulously to workers who are directly dependent on the State; see GB.268/14/6, paras. 19, 22.

<sup>14</sup> The Committee has been noting the observations made by the Democratic Organization of African Workers' Trade Union (DOAWTU) to this effect and has been calling upon the Government to provide detailed information on the actual size of the problem; see RCE 2002, 322 (*Central African Republic*) and RCE 2000, 212 (*Central African Republic*).

<sup>15</sup> See RCE 1999, 320 (*Zambia*) and RCE 2002, 347 (*Zambia*).

<sup>16</sup> See RCE 1999, 312 (*Comoros*); RCE 2001, 353 (*Comoros*); RCE 2002, 325 (*Comoros*).

<sup>17</sup> See RCE 1999, 308 (*Argentina*); RCE 2000, 210 (*Argentina*); RCE 2002, 320 (*Argentina*).

<sup>18</sup> See RCE 2000, 212 (*Colombia*); RCE 2001, 351 (*Colombia*); RCE 2002, 323 (*Colombia*).

<sup>19</sup> See RCE 1995, 226 (*Costa Rica*); RCE 2001, 354 (*Costa Rica*); RCE 2002, 326 (*Costa Rica*).

<sup>20</sup> See RCE 1999, 313 (*Dominican Republic*) and RCE 2001, 357 (*Dominican Republic*).

<sup>21</sup> See RCE 1992, 256 (*Bolivia*) and RCE 2001, 350 (*Bolivia*).

<sup>22</sup> See RCE 1997, 221 (*Brazil*); RCE 1999, 310 (*Brazil*); RCE 2002, 321 (*Brazil*). See also the report of the tripartite committee set up to examine the representation made in 1993 by the Latin American Central of Workers (CLAT) under article 24 of the Constitution alleging non-observance by Brazil of [Conventions Nos. 29](#) and [105](#), GB.264/16/7.

low of 47 per cent in the *Russian Federation* to a high of 70 per cent in *Kyrgyzstan*. Nearly one out of five survey respondents reported paying workers part of their wages in kind. Among these establishments, payments in kind were equivalent on average to 16 per cent of total establishment output.<sup>23</sup> The Committee, in the same way as other ILO supervisory bodies, has consistently taken the view that any effort to tackle the problem of outstanding wage payments, and thus complying with the requirements of Article 12 of the Convention, should not infringe other provisions of the Convention, such as Article 3 on wage payment in legal tender or Article 4 on allowances in kind.

**362.** In the context of the representation filed in 1997 by Education International and the Education and Science Employees' Union of Russia against the *Russian Federation* for non-observance of [Convention No. 95](#), the complainant organizations alleged that in some rural areas local authorities had made arrangements with shops to supply teachers and other staff with food up to a certain value on the understanding that cash payment for such commodities would be made once their salaries came through. The Governing Body recalled, in this respect, the provisions of Article 4 of the Convention, which lays down criteria for the limitation and regulation of the payment of wages in the form of allowances in kind, and urged the Government to ensure that measures taken with a view to reimbursing wage arrears do not result in the violation of other provisions of the Convention.<sup>24</sup> Following subsequent communications received from the Russian Cultural Workers' Union and the Education and Science Employees' Union of Russia denouncing an increase in the payment of wages in kind in some regions, the Committee has been expressing its concern over the fact that payments in kind in contravention of the conditions set out in the Convention have continued as a method of solving the problem of accumulated wage arrears.<sup>25</sup>

**363.** Similarly, in the representation made in 2000 by the General Federation of Trade Unions of the Republic of Moldova alleging non-observance by the *Republic of Moldova* of [Convention No. 95](#), the complainant organization asserted that some 100,000 workers in most branches of the national economy had experienced delays in the payment of their wages ranging from six months to more than a year, and also denounced the widespread practice among the majority of employers of substituting alcoholic drinks and tobacco products for cash wages. In drawing up its recommendations, the

<sup>23</sup> See Christine Evans-Klock and Alexander Samorodov, *The employment impact of privatisation and enterprise restructuring in selected economies*, ILO, 1998, pp. 79-80. See also Daniel Vaughan-Whitehead (ed.), *Paying the price: The wage crisis in Central and Eastern Europe*, ILO, 1998, pp. 26-29.

<sup>24</sup> See [GB.270/15/5](#), paras. 40, 43.

<sup>25</sup> See *OECD Economic Surveys: Russian Federation*, 1997, p. 115.

Governing Body committee considered the extent to which the reported decline in wage arrears might be attributed to payments in the form of alcohol and tobacco and pointed out once again the need to ensure that measures taken to reimburse wage arrears do not result in the violation of other provisions of the Convention.<sup>26</sup> According to the representation made by the Trade Union Confederation of Congo Workers in 1997 alleging non-observance by Congo of [Convention No. 95](#), the Government proposed to Congolese public servants and workers in certain public enterprises, who had been paid from 15 to 18 months in arrears since 1992, that it would ensure the regular payment of wages and arrears by converting them into an internal debt. In its conclusions and recommendations, the Governing Body recalled that the payment of wages in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, is prohibited by the Convention and requested the Government to provide information on the implementation of the undertaking it gave in April 1994 to ensure the regular payment of wages and to pay arrears, and on the methods of reimbursement of wage arrears.<sup>27</sup>

**364.** Most recently, the Government of the *Russian Federation* reported the case of a coalmining company which issued promissory notes for the sum of 750,000 roubles in an effort to reduce the amount of wage arrears. The Committee urged the Government to put an end to similar practices, which openly contravene the requirements of Article 3, paragraph 1, of the Convention.<sup>28</sup> It appears that in most of the former Soviet republics, and principally in the *Russian Federation*, payment in goods in place of monetary settlements – better known as barter – has become a well-entrenched phenomenon since 1992 pervading all aspects of economic life, resulting in a situation in which companies cannot pay their suppliers, suppliers cannot pay their workers, workers cannot pay their utility bills, and practically no one can afford to pay taxes. According to World Bank figures, it is estimated that by 1997 the overdue debts of Russian enterprises, including unpaid wages, were more than twice the amount of legal tender in circulation. Analysts argued that by the second half of the 1990s, barter had been transformed from an exceptional phenomenon into a stable social institution, while others referred to the “barterization” or “demonetization” of certain transition economies.<sup>29</sup> In a

<sup>26</sup> See GB.278/5/1, para. 34.

<sup>27</sup> See GB.268/14/6, para. 21.

<sup>28</sup> See RCE 2002, 338 (*Russian Federation*).

<sup>29</sup> See V. Makarov and G. Kleiner, “Barter in Russia: An institutional stage”, in *Problems of Economic Transition*, Vol. 42, No. 11, Mar. 2000, pp. 51-79; A. Iakovlev, “The causes of barter, non-payments, and tax evasion in the Russian economy”, *ibid.*, pp. 80-96. According to the findings of a recent survey of more than 3,000 firms in 20 transition countries, barter and other non-monetary transactions remain widespread in the Russian Federation and Ukraine, as well as in

situation of deepening cash shortages and generalized non-payment, payment by barter was obviously still considered better than continued unpaid arrears. There have been countless press reports on barter arrangements as alternatives to monetary payments, such as those of the factory in the Russian city of Perm that regularly paid its employees in bicycles which they then had to try and sell on the streets in direct competition with their employers. In practice, in some transition economies, the use of promissory notes and barter as a medium of wage payment is part of the much broader recourse to monetary surrogates for the settlement of inter-enterprise debts.<sup>30</sup> It is in this sense that wage arrears and payments in kind are often considered as the social costs of a cashless economy, or the price to pay in order to keep the production wheels rolling and employees at work.

**365.** Admittedly, this is not the place to discuss in detail the ongoing crisis of wage arrears and income insecurity in certain parts of the world. The Committee takes this opportunity, however, to recall the main points on which it has been focusing its attention in recent years with regard to the obligations arising out of Article 12, paragraph 1, of the Convention.

**366.** In the Committee's view, the deferred payment of wages is part of a vicious circle that inexorably affects the national economy in its entirety. Depriving workers of their cash income lowers consumption, which implies reduced tax revenues for the State, and poor tax collection leads to the stagnation of public spending and growing indebtedness. In turn, such phenomena often lead to higher unemployment and deepening social crisis. The Committee is also concerned about the practices of freezing wage debts and focusing on the payment of current wages instead. Some enterprises attempt in this way to retain their employees at work, while avoiding making any clear commitment with respect to the settlement of outstanding payments. All the evidence indicates that the phenomenon of wage arrears is self-propagating and that a new cycle of non-payment will sooner or later begin. The Committee therefore insists that while the settlement of accumulated wage debts may in truly exceptional cases be spaced out over a reasonable period of time, nothing short of the total repayment

Belarus, Republic of Moldova and Kazakhstan, while they are far from negligible in other Central and Eastern European countries, particularly in Croatia and Slovenia; see Wendy Carlin, Steven Fries, Mark Schaffer and Paul Seabright, "Barter and non-monetary transactions in transition economies: Evidence from a cross-country survey", EBRD, Working paper No. 50, June 2000. See also Simon Commander and Christian Mumssen, "Understanding barter in Russia", EBRD, Working paper No. 37, Dec. 1998.

<sup>30</sup> It is estimated that in the late 1990s in the *Russian Federation* alone there was a \$15 billion market in IOUs, known as *veksels* (from the German word "wechsel" or exchange). Many *veksels* are redeemable for cash, while others are good for oil, electricity, chemicals, or cement. On *veksels* and other money surrogates, see *OECD Economic Surveys: Russian Federation, 1997*, pp. 178-185.

of the wages due can offer any real prospects of escaping from this vicious circle.

#### 6.2. The importance of supervision, sanctions and fair compensation

71. The Committee notes with concern the increase in the number of cases of delayed payment of wages, non-payment or partial payment of wages in a growing number of countries in Eastern Europe, Africa and Latin America. [...] These practices openly contravene social justice and more precisely the principle of wage protection established under Convention No. 95, particularly the principle of regular payment of wages for work done or services rendered. [...]

72. Even if these situations have their origin in economic and financial difficulties caused by the transition to a market economy or by the implementation of structural adjustment programmes, their scope and persistence may have been aggravated by the failure of the States concerned to take measures to ensure the respect of laws, which in most countries stipulate adequate protection of workers against the delayed payment, non-payment or partial payment of their wages. Such delays or non-payment entail serious social consequences since they deprive the workers and their families of the resources that they have right to, and also disastrous consequences for the economy and public finances. [...]

73. The Committee considers, in light of the cases which the supervisory bodies of the ILO have so far examined, that the application of the Convention, through the national provisions giving effect to it, should involve three principal steps:

- (i) effective assessment of the situation in order to determine the amount and nature of debts due as wages, the number of workers concerned, the number and nature of enterprises concerned in the delay in payment of wages so that causes of the delay can be analysed and remedies instituted;
- (ii) appropriate sanctions to punish and prevent infringements. It is not enough to provide for such sanctions in law; they should be strictly enforced against those who take advantage of the economic situation to commit abuses; and
- (iii) steps to make good the detriment suffered, including not only the amounts due as wages but also the sums to compensate for the loss caused by the delay in payment. It is useful in this regard to examine the possibilities of submitting the cases to the court in order to make good the detriment suffered.

Source: Report of the Committee of Experts, 1997, General Report, paras. 71-73 at p. 21.

**367.** While acknowledging that the solution to the wage debt crisis is also conditional on the existence of an effective labour administration, a credible judicial system, healthy financial institutions and solid industrial relations, the Committee wishes to emphasize that a situation in which part of the workforce is systematically denied the fruits of its labour cannot be prolonged and that priority action is therefore needed to put an end to such practices. The Committee also firmly believes that, while the problem of delays in the payment



of wages may be symptomatic of transition economies, this cannot stand as a valid excuse over the years for the continued failure to honour contractual obligations and pay workers regularly what is due to them.<sup>31</sup> Nor would it be an excuse that the deferred payment of wages only occurs, or is largely confined, in the private sector. In this respect, the Committee has emphasized on a number of occasions that a government is bound to exert all its authority to ensure not only that wages are paid at regular intervals in the public sector, but also that the requirements of the Convention are fully and scrupulously applied in private enterprises and other non-state-owned undertakings.

**368.** On a more practical level, the Committee considers that the application of the Convention comprises three essential elements in this respect: (i) efficient control; (ii) appropriate sanctions; and (iii) the means to redress the injury caused, including not only the full payment of the amounts due, but also fair compensation for the losses incurred by the delayed payment.<sup>32</sup>

**369.** With respect to control and supervision, the Committee hardly needs to emphasize the importance of properly functioning labour inspection services capable of identifying breaches of wage legislation and prosecuting offenders. In the Committee's view, the effectiveness of such services should be measured not so much by the number of inspection visits or the proliferation of the relevant bodies and agencies, but by the concrete results achieved preventing the occurrence of wage arrears. It is true, of course, that in order to exercise effective control of the situation with regard to the payment of wages, labour inspection services must be provided with the numerical strength and the material resources required by the scope and difficulty of their task.<sup>33</sup> The information available shows that in the countries hardest hit by wage arrears in recent years, i.e. the *Russian Federation* and *Ukraine*, despite the restructuring and reinforcement of state labour inspection bodies, mass violations of labour

<sup>31</sup> See, for instance, RCE 2002, 345 (*Ukraine*). Similar remarks have been made by the Conference Committee when examining individual cases concerning compliance with the Convention; see ILC, 85th Session, 1997, *Record of Proceedings*, p. 19/104 and ILC, 86th Session, 1998, *Record of Proceedings*, p. 18/105.

<sup>32</sup> See, for instance, RCE 2000, 215 (*Russian Federation*); RCE 1997, 227 (*Ukraine*); RCE 1995, 233 (*Turkey*). See also the report of the Committee set up to examine the representation under article 24 of the Constitution alleging non-observance by the *Russian Federation* of Convention No. 95, November 1997, [GB.270/15/5](#), paras. 30-40, pp. 7-10, and the Report of the Committee set up to examine the representation under article 24 of the Constitution alleging non-observance by Congo of [Convention No. 95](#), March 1996, [GB.265/12/6](#), paras. 21-24, pp. 6-7.

<sup>33</sup> For example, at the 1999 Conference Committee discussion of the case of the *Russian Federation*, the Employer members estimated that roughly 1 per cent of the wage payment situation was being addressed by the Russian labour inspection system, and that a much lower percentage of the problem was being corrected; see ILC, 87th Session, 1999, *Record of Proceedings*, p. 23/125.

rights continue, including the irregular payment of wages. In many cases, the failure to pay wages on time is not due to liquidity problems, but simply to the misappropriation of wage funds. It has also been observed that the most prosperous and best-paid branches of production, such as gas and electricity generation, are among those with the highest incidence of wage arrears as they endeavour to minimize monetary resources and engage in barter transactions for tax evasion purposes. Supervision is therefore of critical importance.

**370.** There can be no doubt that the problem of the delayed payment or non-payment of wages often reveals grave weaknesses in the national legislation and therefore calls for appropriate action at the legislative level. Yet, the Committee wishes to emphasize that legislative conformity in itself does not guarantee compliance with the Convention. Without effective enforcement in practice, national laws and regulations are destined to remain a dead letter and offer little consolation to workers deprived of their livelihood.

**371.** As regards the imposition of sanctions, the Committee places particular emphasis on the need for truly dissuasive penalties, such as harsh monetary fines, so that employers no longer find it preferable to pay what may be no more than a symbolic fine rather than releasing wage funds on time.<sup>34</sup> Once again, the adequacy of the sanctions prescribed for violations of the legislation on wage protection needs to be judged only by tangible results, that is to say a sizeable reduction in the number of workers suffering from arrears in the payment of their wages.<sup>35</sup>

**372.** With reference to the third element mentioned above, the Committee barely needs to recall that workers who are unpaid for many months or even years, are entitled not only to the payment of their full wages due, but also to appropriate compensation for the injury suffered. Steps to make good such injury need to be taken especially in conditions of high inflation where any delay in the payment of wages results in a real contraction of the worker's income.

**373.** Another important aspect is the need for reliable information concerning the nature and extent of wage arrears. As the Committee has been pointing out for a number of years, a proper assessment of the problem in its true dimensions, with its causes and effects, is only possible through the systematic collection of up-to-date statistical information emanating from credible sources.

<sup>34</sup> See RCE 2002, 341 (*Turkey*).

<sup>35</sup> This view was also shared by the Committee set up to examine the representation made in 1984 by the General Confederation of Portuguese Workers (CGTP-IN) under article 24 of the Constitution alleging non-observance by *Portugal* of [Convention No. 95](#), which concluded that the "penalties referred to above do not appear to have halted the increase in the number and duration of cases of delay in the payment of wages over the period under consideration [and] consequently they cannot be considered adequate within the meaning of Article 15(c) of the Convention"; see *Official Bulletin*, Special Supplement 4/1985, Vol. LXVIII, Series B, para. 45, p. 14.

In practically every comment it has addressed on this issue, the Committee has requested full data on the number of workers affected, the amount of arrears settled and the outstanding amount of arrears, the number of inspections made, the penalties imposed and the time schedule for the repayment of the sums remaining due.<sup>36</sup>

### 6.3. The failure to ensure the regular payment of wages

30. The Committee recalls that a State that ratifies the Convention is required not only to apply it scrupulously to workers whose wages are financed from the State's budget, but also to ensure that it be applied by local authorities and private enterprises. [...]

31. Whether it is called wage arrears, delayed payment of wages or non-payment of wages, the situation falls within the scope of the Convention as a failure to ensure the regular payment of wages provided under Article 12, paragraph 1. [...]

33. The present allegation therefore concerns the effective enforcement of the relevant national legislation, since the legislative conformity alone is insufficient to constitute satisfactory compliance with the Convention unless the law is effectively enforced in practice. [...]

35. The Committee notes that the Government considers that the problem of wage arrears can only be solved by the resolution of the financial crisis. While it is difficult to deny the relation between the problem of wage arrears and the general situation of finance and the national economy, it is also obvious that the wage arrears of such a magnitude all over the country and throughout the sectors are adversely affecting the national economy. It seems indispensable to the Committee that the Government make a firm commitment and take all possible measures to put an end to the problem of wage arrears so as to cut the chain of vicious circle – financial crisis causing wage arrears, resulting in prejudice to the national economy, leading to the reduction of tax revenue, which aggravates the financial crisis.

36. What the Committee notes with special concern is the reference by the Government among the principal causes of the wage arrears, to the diversion of funds earmarked for the pay bill to other directions such as financial transactions, involving a massive disrespect of the civil law principles and even criminal abuse. If such practices were to be left untouched, all other financial measures to mobilize resources for the prompt payment of wages would have only limited results and just further benefit those who take advantage of the situation.

37. In the opinion of the Committee, the effective application of the Convention comprises three principal aspects; supervision, appropriate penalties to prevent and punish infringements, and steps to make good the prejudice suffered. [...]

Source: Report of the Committee set up to examine the representation concerning non-observance by the Russian Federation of [Convention No. 95](#) made under article 24 of the Constitution by the Education International and the Education and Science Employees' Union of Russia, Nov. 1997, [GB.270/15/5](#).

<sup>36</sup> See, for instance, RCE 2002, 322 (*Central African Republic*), 329 (*Djibouti*), 347 (*Zambia*). Similarly, the Conference Committee has emphasized that without such data it would be very difficult to evaluate any substantial progress made in the settlement of wage arrears and reach any conclusions with regard to compliance with the Convention; see, for instance, ILC, 87th Session, 1999, *Record of Proceedings*, p. 23/126.

**374.** In the Committee's opinion, bringing the accumulation of wage arrears to an end requires sustained efforts, an open and continuous dialogue with the social partners and a wide range of measures, not only at the legislative level but also in practice.<sup>37</sup> The Committee remains convinced that in view of the complexity of the issues related to the deferred payment of wages, viable solutions may only be found in cooperation with the social partners. This point is of particular relevance to countries in transition, since social dialogue is the only way of sharing the burden of economic reforms while preserving social peace. Negotiated solutions have much a better chance of succeeding in a context where social consensus is the only solid basis for the continuation of painful structural changes. Finally, the Committee is bound to reiterate the need for strong commitment and rigorous action on the part of state authorities in addressing the three crucial parameters of the problem, namely tight supervision, severe sanctions and appropriate compensation to workers for the loss incurred.

## 1.2. Pay intervals in national law and practice

**375.** In most countries the labour legislation requires wages to be paid regularly and at short intervals. Labour laws often provide for a maximum pay period generally applicable to all employed persons, while in some instances pay intervals vary according to the type of work or the type of employment contract.

**376.** In many countries, the national legislation prescribes a maximum pay interval which is applicable to employed persons in general or to broad categories of workers. Most of these countries provide for the payment of wages not less often than once a month. This is the case, for instance, in *Brazil*,<sup>38</sup>

<sup>37</sup> See, for instance, RCE 2001, 354 (*Congo*) and RCE 1999, 319 (*Ukraine*). See also ILC, 86th Session, 1998, *Record of Proceedings*, p. 18/101 and ILC, 75th Session, 1988, *Record of Proceedings*, p. 28/48.

<sup>38</sup> (2), s. 459; (7), s. IV; (8), s. 331. This is also the case in *Bahamas* (1), s. 3; *Cameroon* (1), s. 68(1); *Cape Verde* (1), s. 118; *Chad* (1), s. 259; *Chile* (1), s. 55; *Democratic Republic of the Congo* (1), s. 80; *Dominica* (2), Schedule, s. 3(b); *Estonia* (2), s. 31(1); *Guinea-Bissau* (1), s. 104(2); *Hungary* (1), s. 155(1); *Republic of Korea* (1), s. 42(2); *Kyrgyzstan* (1), s. 233(1); *Libyan Arab Jamahiriya* (1), s. 32(1); *Malta* (1), s. 28(1); *Mauritius* (1), ss. 4(1), 8(1); *Paraguay* (1), s. 232(a); *Poland* (1), s. 85(1); *Romania* (1), s. 87(1); (2), s. 7(1); *Slovenia* (1), s. 134(1); *Swaziland* (1), s. 47(1); *Switzerland* (2), s. 323; *Turkey* (1), s. 26; *Uganda* (1), s. 35; *United Kingdom: Jersey* (17), s. 10; *Montserrat* (21), s. 16(2); *Virgin Islands* (22), s. C34(1); the *United Republic of Tanzania* (1), s. 58(1); *Uruguay* (2), s. 31; *Yemen* (1), s. 61. Similarly, in the United States, in some states of the Union, such as *Colorado* (10), s. 8-4-105(1), *Delaware* (13), s. 1102(a), *Idaho* (17), s. 45-608, *Kansas* (21), s. 44-314, *Minnesota* (29), s. 181.101, *South Dakota* (49), s. 60-11-9, and *Wisconsin* (58), s. 109.03(1), provision is made for pay periods of no greater duration than one calendar month or 30 days. The Government has reported that pay periods longer than a month are uncommon and subject to legal challenge. In *Germany* (1),

China,<sup>39</sup> Cuba,<sup>40</sup> Czech Republic,<sup>41</sup> Dominican Republic,<sup>42</sup> Iraq,<sup>43</sup> Japan,<sup>44</sup> Malaysia,<sup>45</sup> Nigeria,<sup>46</sup> Spain<sup>47</sup> and Sri Lanka.<sup>48</sup> In general, the labour laws of these countries allow for shorter intervals, e.g. daily, weekly or fortnightly, to be specified in collective agreements, enterprise agreements or individual contracts of employment. In some cases, the law further provides that where no period is specified in the contract, the wage period is deemed to be one month.<sup>49</sup> In Seychelles,<sup>50</sup> cash wages are payable at regular intervals as agreed between the employer and the worker, but not less than once a month and not later than the fifth day following the date on which they fall due. In Australia, under the laws of Queensland,<sup>51</sup> wages must be paid at least monthly unless an industrial instrument governing the relevant employment provides for another pay interval. In India,<sup>52</sup> the wage periods are fixed by the employer provided that no such wage period may exceed one month. In Indonesia,<sup>53</sup> the payment of wages may be carried out once a week at the earliest, or once a month at the latest.

s. 119a; (4), s. 64, according to the Government's report, the monthly payment has most probably now become the general rule.

<sup>39</sup> (1), s. 7; (2), s. 50.

<sup>40</sup> (1), s. 123.

<sup>41</sup> (1), s. 119(1).

<sup>42</sup> (1), ss. 198, 199, 208, 209.

<sup>43</sup> (1), s. 42(1).

<sup>44</sup> (2), s. 24(2); (5), s. 53.

<sup>45</sup> (1), s. 18.

<sup>46</sup> (1), ss. 9(4) and 15. No contract may provide for the payment of wages at intervals exceeding one month unless the written consent of the state authority has been previously obtained.

<sup>47</sup> (1), s. 29(1).

<sup>48</sup> (1), ss. 19(1)(b), 31(3); (2), ss. 2(b), 23(1).

<sup>49</sup> For instance, in Singapore (1), s. 20, an employer may fix salary periods not exceeding one month, while in the absence of a salary period so fixed the salary period shall be deemed to be one month.

<sup>50</sup> (1), s. 32(2). Similarly, in Croatia (1), s. 83(2), (3), the Labour Act provides that the pay periods are to be fixed by collective agreements or by individual contracts at intervals not exceeding one month.

<sup>51</sup> (7), s. 393(1).

<sup>52</sup> (1), s. 4(2). Similarly, in Thailand (1), s. 70(1), where wages are calculated on a monthly, daily or hourly basis, on the basis of another period of not more than one month, or on a piece-rate basis, payment to the employee must be made not less than once a month.

<sup>53</sup> (2), s. 17. Similarly, in Namibia (1), s. 36(1), the law stipulates that wages must be paid weekly or, if the employee and his employer so agree, fortnightly or monthly.

377. In other countries, such as *Bulgaria*,<sup>54</sup> *Lithuania*,<sup>55</sup> *Mexico*,<sup>56</sup> *Panama*,<sup>57</sup> *Philippines*,<sup>58</sup> *Russian Federation*<sup>59</sup> and *Venezuela*,<sup>60</sup> the standard period for the payment of labour remuneration is twice a month, even though the periodicity of wage payment may in principle be negotiated in the framework of collective or individual agreements. In Canada,<sup>61</sup> the frequency of payment of wages is established differently across the country, but is semi-monthly or not more than 16 days in the majority of the jurisdictions. In *Ukraine*,<sup>62</sup> wages are paid regularly according to the deadlines established in a collective agreement, but not less frequently than twice a month at intervals not exceeding 16 calendar days. In *Saint Vincent and the Grenadines*,<sup>63</sup> the wages of labourers, i.e. persons employed by the day or employed to do daily task work at a fixed wage or rate,

<sup>54</sup> (1), ss. 245(1), 270(2). This is also the case in *Belarus* (1), s. 73; *Republic of Moldova* (1), s. 102; (2), s. 19(1); *Tajikistan* (1), s. 108. Similarly, in the United States, in a large number of states, including Arizona (7), s. 23-351(A), Arkansas (8), s. 11-4-401(a), California (9), s. 204, District of Columbia (14), s. 32-1302, Hawaii (16), s. 388-2(a), Illinois (18), s. 115/3, Indiana (19), s. 22-2-5-1, Kentucky (22), s. 337.020, Maine (25), s. 621-A(1), Maryland (26), s. 3-502, Mississippi (31), s. 71-1-35(1), Missouri (32), s. 290.080, Nevada (35), s. 608.060, New Jersey (37), s. 34:11-4.2, New Mexico (38), s. 50-4-2(A), Ohio (43), s. 4113.15, Oklahoma (44), s. 40-165.2, Utah (52), s. 34-28-3(1)(a), and Wyoming (59), s. 27-4-101, the payment of wages is generally semi-monthly or at intervals not exceeding 16 days. In contrast, in other states, such as Connecticut (11), s. 31-71b, New Hampshire (36), s. 275:43, and Rhode Island (47), s. 28-14.2.2, wages are to be paid, in principle, as often as once a week, but different pay arrangements may be provided for in collective bargaining agreements. A table of state pay day requirements is found at [www.dol.gov/esa/programs/whd/state/payday.htm](http://www.dol.gov/esa/programs/whd/state/payday.htm).

<sup>55</sup> (2), s. 11.

<sup>56</sup> (2), s. 88.

<sup>57</sup> (1), s. 148.

<sup>58</sup> (1), s. 103; (2), Bk. III, Rule VIII, s. 3(a). If on account of *force majeure* or circumstances beyond the employer's control, payment of wages cannot be made, the employer shall pay the wages immediately after such *force majeure* or circumstances have ceased. But no employer shall make payment less frequently than once a month.

<sup>59</sup> (1), s. 136.

<sup>60</sup> (1), s. 150. However, wages may be paid at intervals not exceeding one month in respect of workers receiving food and lodging from their employer. The situation is similar in *Nicaragua* (2), ss. 86, 146, where the pay interval may not exceed a fortnight in the case of salaried employees, except for domestic workers who may receive their wages monthly.

<sup>61</sup> See, for instance, *British Columbia* (6), s. 17(1); *Manitoba* (7), s. 86(1); *New Brunswick* (8), s. 35(1); *Newfoundland and Labrador* (9), s. 33(1); *Nova Scotia* (12), s. 79(1)(a); *Prince Edward Island* (15), s. 30(2)(a); *Quebec* (16), s. 43; *Saskatchewan* (17), s. 48(1). In contrast, in *Alberta* (4), s. 7(2), a pay period may not be longer than one work month, whereas in *Ontario* (14), s. 11(1), the law stipulates that an employer must establish a recurring pay period without specifying its length.

<sup>62</sup> (2), s. 24.

<sup>63</sup> (1), s. 3.

are paid at intervals not exceeding 14 days. In Australia, in New South Wales,<sup>64</sup> remuneration payable to an employee must be paid, if so demanded, at least once every fortnight, while industrial instruments may provide for other pay intervals, such as weekly payments. In Tasmania,<sup>65</sup> awards and registered agreements generally require wages to be paid on either a weekly or fortnightly basis.

**378.** In a certain number of countries, different wage payment intervals are prescribed for different categories of employed persons. For the most part, national laws differentiate between wage earners, or manual workers or workers employed by the hour, day or week, and salaried employees, or workers whose wages are calculated on a monthly or annual basis. Thus, wages must be paid weekly or fortnightly to wage earners and fortnightly or monthly to salaried employees. This is the case, for example, in *Azerbaijan*,<sup>66</sup> *Colombia*,<sup>67</sup> *Ecuador*,<sup>68</sup> *Egypt*,<sup>69</sup> *Israel*<sup>70</sup> and *Tunisia*.<sup>71</sup> In *Costa Rica*<sup>72</sup> and *Guatemala*,<sup>73</sup> the parties may fix the intervals for the payment of wages, which may not

<sup>64</sup> (5), s. 117(1).

<sup>65</sup> In the terms of most awards, wages must be paid weekly not later than the Thursday of the week of payment; see, for instance, Fuel Merchants Award, s. 32; Baking Industry Award, s. 24; Optical Industries Award, s. 26(a); Meat Retailing Award, s. 23. In other cases, provision is made for payment not less often than fortnightly as, for instance, in the Hospitals Award, s. 39(a) and the Broadcasting and Television Award, s. 28(a). Yet other awards, such as the Estate Agents Award, s. 24, provide for wage payment at least once a month.

<sup>66</sup> (1), ss. 172(1), (2), 174(1) and 178(1). This is also the case in *Benin* (1), s. 221; *Burkina Faso* (1), s. 113; *Central African Republic* (1), s. 105; *Comoros* (1), s. 104; *Côte d'Ivoire* (1), s. 32(3); *Djibouti* (1), s. 100; *Gabon* (1), s. 152; *Islamic Republic of Iran* (1), s. 37; *Lebanon* (1), s. 47; *Morocco* (1), s. 3; *Oman* (1), s. 55; *Syrian Arab Republic* (1), s. 47; *Togo* (1), s. 96; *United Kingdom: Gibraltar* (11), s. 19(1)(a), (c). Similarly, in the United States, in the State of New York (39), s. 191(1)(a), (d), manual workers must be paid weekly while clerical workers may not be paid less frequently than semi-monthly. In *Kenya* (1), s. 5(2), in the case of casual employees, payment is due at the end of the day, whereas employees employed for a period exceeding one month must be paid at the end of each month.

<sup>67</sup> (1), s. 134(1).

<sup>68</sup> (2), s. 83.

<sup>69</sup> (1), s. 34.

<sup>70</sup> (1), ss. 9, 10 and 13. The Minister of Labour may prescribe wage payment intervals other than those specified in the Wage Protection Act, but no use has been made so far of this permissive provision.

<sup>71</sup> (1), s. 140.

<sup>72</sup> (1), s. 168. Similarly, in *Honduras* (2), s. 368, the pay interval may not in any circumstances exceed one week in the case of manual workers or one month in the case of intellectual workers and domestic servants. In *Bolivia* (1), ss. 34, 53; (2), s. 40, the legislation provides for weekly payments in respect of home workers, monthly payments in the case of contracted workers and domestic workers and fortnightly payments for manual workers.

<sup>73</sup> (2), s. 92.

exceed in any case a fortnight in the case of manual workers and a month in the case of intellectual workers and domestic servants. Similar provisions exist in *Congo*<sup>74</sup> and *Niger*,<sup>75</sup> provided that a daily worker engaged by the hour or by the day for an occupation of short duration is to be paid every day at the end of work. In Viet Nam,<sup>76</sup> an employer is entitled to determine the periodicity of wage payment, whether calculated by reference to hours, days, weeks or months, or on an output basis, provided that the selected pay interval is applied for a fixed period of time and the employee is notified of that interval. Employees whose wages are calculated by reference to hours, days or weeks shall be paid at the end of the hour, day or week or be paid accumulated wages as agreed upon by the parties, but at least every 15 days, whereas employees whose remuneration is calculated by reference to months shall be paid monthly or half-monthly. Similarly, in *Argentina*,<sup>77</sup> workers whose remuneration is calculated by the month are to be paid at the end of each calendar month, whereas workers remunerated at a daily or hourly rate must be paid weekly or fortnightly. In Kuwait<sup>78</sup> and Qatar,<sup>79</sup> workers engaged at yearly or monthly rates must be paid at least once a month, whereas workers paid on an hourly, daily, weekly or piece rate must be paid at least once in every two weeks.

<sup>74</sup> (1), ss. 88, 89. This is also the case in *Mali* (1), s. L.103; *Mauritania* (1), s. 90; *Senegal* (1), s. L.115. In these countries, the law further provides that such other pay intervals as may be customary may apply to some trades and professions to be specified by the Labour Minister upon the recommendation of the labour advisory board.

<sup>75</sup> (1), s. 160. However, section 206 of Decree No. 67-126/MFP/T of 7 September 1967 exempts all agricultural, industrial and commercial enterprises from the obligation of paying the wages of workers employed on a daily or weekly basis at regular intervals not exceeding 15 days. The Committee has been commenting for more than 30 years on the inconsistency of such a provision with the requirements of the Convention; see RCE 2002, 335 (*Niger*).

<sup>76</sup> (1), s. 58(2), (3).

<sup>77</sup> (1), s. 126(a), (b).

<sup>78</sup> (1), s. 29. This is also the case in *Bahrain* (1), s. 68 and the *United Arab Emirates* (1), s. 56. Similarly, in *Saudi Arabia* (1), s. 116, the wages of employees that are calculated on a daily rate are to be paid at least once a week, while wages calculated on a monthly rate have to be paid once a month. In *Finland* (1), Ch. 2, s. 13, if the basis for a time rate is a period shorter than one week, payment is due at least twice a month, otherwise once a month.

<sup>79</sup> (1), s. 29(2).



**379.** Also, in *France*<sup>80</sup> and *Guinea*,<sup>81</sup> salaried employees, as well as wage earners to whom an agreement for monthly payment applies, are paid at least once a month, while wage earners not benefiting from such an agreement are paid at least twice a month at intervals not exceeding 16 days. In *Norway*,<sup>82</sup> when hourly, daily or weekly pay is agreed upon, payment has to be effected at least once a week, while payments to employees whose remuneration is calculated on a monthly or annual basis have to be made twice a month unless otherwise agreed. In *Belgium*<sup>83</sup> and *Luxembourg*,<sup>84</sup> wage payment is made, in principle, at least twice a month at intervals not exceeding 16 days and in no case less often than once a month. Exceptions may be authorized by decision of the appropriate joint committee, after they have been made binding by the Head of the State.

**380.** In other countries,<sup>85</sup> the law makes a further distinction in respect of intervals for the payment of wages to persons whose remuneration is calculated on a piece-work basis or depends on the completion of a specific task. Thus, in the case of piece work expected to take more than a fortnight to complete, the dates of payment may be fixed by mutual agreement, but the worker has to receive each fortnight an advance equal to at least 90 per cent of the minimum

<sup>80</sup> (1), s. L.143-2. The possibility of concluding collective agreements by virtue of which wage workers are to be paid on a monthly basis and all or part of the advantages previously accorded to salaried employees are extended to them was introduced by Act No. 78-49 of 19 January 1978. Only homeworkers, seasonal, casual and part-time workers are exempted from the scope of such agreements. According to an observation submitted recently by a French workers' organization, the wording of the relevant provision of the French Labour Code is ambiguous, since it makes no explicit reference to payment "at regular intervals" and does not specify whether the term "month" means a calendar month or a 30-day period between two dates. If construed as a calendar month, the wage could be paid on the first day of one month and the last day of the next month, which would mean a 60-day interval. In its reply, the Government recognized that section L.143-2 of the Code may be understood differently, but stated that this could not call into question the principle of the regular payment of wages, especially in the light of section R.154-3 of the Code, which prescribes specific penalties for any violation of the provisions in respect of the payment of wages.

<sup>81</sup> (1), ss. 215, 216.

<sup>82</sup> (1), s. 55(2).

<sup>83</sup> (1), s. 9.

<sup>84</sup> (1), s. 4.

<sup>85</sup> For instance, *Burkina Faso* (1), s. 113; *Central African Republic* (1), s. 105; *Comoros* (1), s. 104; *Congo* (1), s. 88; *Côte d'Ivoire* (1), s. 32(3); *Djibouti* (1), s. 100; *Gabon* (1), s. 152; *Mali* (1), s. L.103; *Mauritania* (1), s. 90; *Niger* (1), s. 160; *Senegal* (1), s. L.115; *Togo* (1), s. 96. Similarly, in *France* (1), s. L.143-2; *Guinea* (1), s. 215; *Lebanon* (1), s. 47; and *Morocco* (1), s. 3, in the case of piece work for a period longer than a fortnight, the date of payment may be fixed by mutual agreement, but the employee must receive fortnightly payments on account and be paid the residue in full during the fortnight following the delivery of the goods. See also *Malta* (1), s. 28(1)(b), and *United Kingdom: Gibraltar* (11), s. 19(1)(b).

wage, and be paid the full amount within the fortnight following delivery of the completed work. Similarly, in Saudi Arabia<sup>86</sup> and *Tunisia*,<sup>87</sup> in the case of piece work lasting longer than two weeks, the worker must receive an advance each week proportionate to the work completed and the full balance within the week immediately following the delivery of the work. In the *Philippines*,<sup>88</sup> employees engaged to perform a task which cannot be completed in two weeks have to be paid at intervals not exceeding 16 days in proportion to the amount of work completed, with the final settlement to be made upon completion of the work, while in *Hungary*,<sup>89</sup> workers employed to perform a task the completion of which requires more than a month must receive an advance at least once a month. In *Argentina*,<sup>90</sup> *Ecuador*,<sup>91</sup> *Nicaragua*<sup>92</sup> and *Paraguay*,<sup>93</sup> workers remunerated at piece or task rates shall be paid once every week or fortnight in proportion to the work completed. In *Israel*,<sup>94</sup> a wage payable for contract work which is expected to take more than 14 days has to be paid on the day of completion of the work, unless provision is made for advances under the terms of a collective agreement or a contract of employment. In *Suriname*,<sup>95</sup> wages not fixed at time rates are deemed to be payable at the intervals customary for the work that is most comparable, as regards its nature and the time and place, to the work for which the wage is payable. Moreover, in the case of wages calculated on the results of the work performed, a certain proportion of the wages, equal to at least three-fourths of the customary wage for comparable work, must be paid on each pay day, as may have been agreed, subject to a final settlement to be made on the first pay day that it is possible to do so.

**381.** Specific wage payment intervals for persons paid on a commission or percentage basis, such as commercial agents or travelling salesmen, are

<sup>86</sup> (1), s. 116. This is also the case in *Egypt* (1), s. 34(b); *Libyan Arab Jamahiriya* (1), s. 32(2); *Rwanda* (1), s. 96; *Syrian Arab Republic* (1), s. 47(b).

<sup>87</sup> (1), s. 140.

<sup>88</sup> (1), s. 103; (2), Bk. III, Rule VIII, s. 3(b). Similarly, in *Finland* (1), Ch. 2, s. 13, if performance-based work lasts longer than one pay period, part of the pay determined on the basis of the time spent on the work must be paid for each pay period.

<sup>89</sup> (1), s. 155(2). In *Kenya* (1), s. 5(1)(b), the *United Republic of Tanzania* (2), s. 34(3) and *Uganda* (2), s. 31(2), workers performing piece work are entitled to be paid at the end of each month in proportion to the amount of work completed, or on the completion of such work, whichever date is earlier. See also *Swaziland* (1), s. 47(1)(d) and *Viet Nam* (1), s. 140.

<sup>90</sup> (1), s. 126(c).

<sup>91</sup> (2), s. 84.

<sup>92</sup> (2), s. 159.

<sup>93</sup> (1), s. 232(b).

<sup>94</sup> (1), s. 11.

<sup>95</sup> (1), ss. 1614M, 1614P.

prescribed in the laws of some countries. This is the case, for instance, in *Tunisia*.<sup>96</sup> In *Costa Rica*<sup>97</sup> and *Malta*,<sup>98</sup> employees whose wages consist of a share of profits, or of a commission on sales or payments made or received by the employer, have to be paid fortnightly or monthly in such proportions as may be determined by agreement between such employees and the employer, while a settlement of accounts must be made at least once a year by the employer in respect of such employees. Similarly, in *Mexico*<sup>99</sup> and *Spain*,<sup>100</sup> the legislation provides for the sharing out of profits on an annual basis.

**382.** In some countries, wage periods are freely negotiable, although in practice wages are paid weekly, fortnightly or monthly. This is the case, for instance, in *Ghana*,<sup>101</sup> *Guyana*<sup>102</sup> and *Slovakia*.<sup>103</sup> In *Thailand*,<sup>104</sup> wages calculated other than on a monthly, daily or hourly basis are payable at the time agreed upon between the employer and the employee. In *Botswana*<sup>105</sup> and *Zambia*,<sup>106</sup> wage intervals are fixed in accordance with the terms of the contract of service, provided that no wage period is less than one week or exceeds one month. In the *Netherlands*,<sup>107</sup> wages may be paid as frequently as the parties

<sup>96</sup> (1), s. 140. In *Morocco* (1), s. 3, and *Rwanda* (1), s. 96, the commissions owed to travelling salesmen and commercial agents must be settled at least once every three months.

<sup>97</sup> (1), s. 168. This is also the case in *Guatemala* (2), s. 92; *Honduras* (2), s. 368; United Kingdom: Gibraltar (11), s. 19(1)(d), (4).

<sup>98</sup> (1), s. 28(1)(e), (3).

<sup>99</sup> (2), s. 122.

<sup>100</sup> (1), s. 29(2).

<sup>101</sup> (1), ss. 31(1)(e), 33(2), (3). The Government has reported that under the new draft Labour Code now before the Parliament specific provision will be made for the payment of labour remuneration to workers directly and at regular intervals to workers.

<sup>102</sup> (1), s. 18(3).

<sup>103</sup> (1), s. 130(2).

<sup>104</sup> (1), s. 70(2).

<sup>105</sup> (1), s. 75(1). Similarly, in *Mozambique* (1), s. 53(1)(c), wages are to be paid at regular intervals of a week, fortnight or month, in accordance with the conditions fixed by the individual labour contract or collective agreement, while in *Sudan* (1), s. 35(2), wages may be paid on a daily, weekly or monthly basis as agreed upon by the parties, except in cases specified by order of the competent authority.

<sup>106</sup> (1), s. 48(1).

<sup>107</sup> (1), s. 1638L. In *Suriname* (1), ss. 1614L, 1614N, wages are in principle payable at the end of each week, month or quarter. These intervals may be reduced by mutual consent of the parties, but may not be increased without the written permission of the Governor. In the case of employees whose remuneration is related to certain data to be ascertained from the employer's accounts, payment must be effected whenever the amount of the wage can be determined and in any case at least once a year.

may agree upon, but not less frequently than once a quarter. In *Austria*,<sup>108</sup> questions such as the procedure for the settling of wage accounts, in particular the time and place of payment, are normally regulated by means of a works agreement concluded between the owner of an establishment and the works council, but where agreement cannot be reached a decision may be taken by a disputes board if either of the parties so requests. In *Italy*,<sup>109</sup> the only relevant legal provision lays down that the time and modalities of payment must be those customarily applied in the place where the work is performed. In practice, wage periods are regulated by collective agreements, although provision is most frequently made for monthly payment for workers and employees, but with a standard payment on account in the middle of the month. However, various other intervals are prescribed for different benefits or wage supplements, e.g. annual periods for productivity bonuses, 13th month, etc. In the United States,<sup>110</sup> in some states of the Union, the frequency of payment appears to be freely negotiable and may be daily, weekly, bi-weekly, semi-monthly or monthly.

**383.** The legislation of some countries, such as *Algeria*<sup>111</sup> and *Madagascar*,<sup>112</sup> contains a general requirement for the payment of wages at regular intervals, but provides no concrete indication as to the length of such intervals. In other countries, such as *Barbados* and *Cyprus*, no pay intervals are prescribed by law, but the requirements of the Convention are fully applied in practice. Similarly, the Government of New Zealand has reported that there are no specific legislative provisions concerning the frequency of wage payments, but that provisions for the regular payment of wages are agreed to by the parties to an employment agreement at the time that the agreement is negotiated. Similarly, in *Chad*,<sup>113</sup> the law does not expressly prescribe that wages are due at regular intervals, nor does it fix any such intervals, but merely provides that except in the case of *force majeure* wages calculated on a monthly basis must be paid not later than eight days after the end of the month. In the same way, in *Jordan*,<sup>114</sup> the law merely prescribes that remuneration must be paid within a period not exceeding seven days from the date on which it becomes payable.

<sup>108</sup> (1), s. 97(3).

<sup>109</sup> (1), s. 2099.

<sup>110</sup> See, for instance, Alaska (5), s. 23.05.140(a); Iowa (20), s. 91A.3(1); Michigan (28), s. 408.472(2); North Carolina (40), s. 95-25.6.

<sup>111</sup> (1), ss. 6, 88.

<sup>112</sup> (1), s. 73.

<sup>113</sup> (1), ss. 259, 260. If the worker so requests, he may receive up to 60 per cent of his wage on account.

<sup>114</sup> (1), s. 46(a). The Government has reported, however, that in practice wages are paid on a monthly, fortnightly or weekly basis.

## 2. Final settlement of wages upon termination of the employment contract

**384.** Article 12, paragraph 2, of the Convention provides that upon the termination of a contract of employment, a final settlement of all wages due shall be effected in accordance with national laws or regulations, collective agreement or arbitration award or, in the absence of any applicable law, regulation, agreement or award, within a reasonable period of time having regard to the terms of the contract.<sup>115</sup>

**385.** In some countries, the legislation provides that all payments due to the worker have to be made in full on the day of the termination of the employment relationship. This is the case, for instance, in *Azerbaijan*,<sup>116</sup> *Botswana*,<sup>117</sup> *Brazil*,<sup>118</sup> *Colombia*,<sup>119</sup> *Czech Republic*<sup>120</sup> and *Uganda*.<sup>121</sup> Similarly, in Australia, at the state level,<sup>122</sup> most industrial awards and collective agreements require all monies due to the employee to be paid on the day of termination or to be forwarded by registered post within two days of

<sup>115</sup> The text initially proposed by the Office referred to “a final settlement of wages to be effected within a period of time to be prescribed by national laws or regulations”. At the time of the first Conference discussion, this text was amended to give a greater degree of latitude by referring to “a reasonable period of time having regard to the terms of the contract”. The draft provision, and in particular the expression “a reasonable period of time”, was challenged at the second Conference discussion as too indefinite for a Convention, but the proposal to transfer this provision from the Convention to the Recommendation was opposed by the Worker members and finally rejected; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 463, and ILC, 32nd Session, 1949, *Record of Proceedings*, p. 508.

<sup>116</sup> (1), ss. 69(2), 83(2), 172(4). This is also the case in *Belarus* (1), s. 77; *Chile* (1), s. 163; *Estonia* (1), s. 74(2); (2), s. 32(1); *Kyrgyzstan* (1), s. 238(1); *Slovakia* (1), s. 129(3); *Zambia* (1), s. 48(4). In *Namibia* (1), s. 36(1), the remuneration payable to an employee upon termination of the employment contract must be paid on the day on which the contract is terminated not later than one hour after the completion of the ordinary working hours.

<sup>117</sup> (1), ss. 77(1), 78(1). The Employment Act specifies, however, that where it is not so practicable, payment shall be made as soon as it is reasonably practicable to do so.

<sup>118</sup> (2), ss. 467, 477. The payment shall be made at the time of the act of termination of the contract of employment.

<sup>119</sup> (1), s. 65.

<sup>120</sup> (1), s. 119(4). If this is not possible, however, because of the system used to calculate wages, the employer must pay the wages not later than the next regular pay day after the day of termination.

<sup>121</sup> (1), ss. 19, 35(d).

<sup>122</sup> In Tasmania, for instance, see Civil Construction and Maintenance Award, s. 28(c); Building and Construction Industry Award, s. 30(g); Hospitals Award, s. 39(g); Broadcasting and Television Award, s. 28(c).

termination. In *Hungary*,<sup>123</sup> *Lithuania*,<sup>124</sup> *Republic of Moldova*<sup>125</sup> and *Tajikistan*,<sup>126</sup> the worker must be paid his work wages and other emoluments on the last day spent at work. In *Nigeria*<sup>127</sup> and the *United Republic of Tanzania*,<sup>128</sup> all wages and benefits due must be paid on or before the expiry of any period of notice given by either party to a contract. The employer is bound to pay to the worker not later than the date of expiration of the notice all remuneration due at that date, while in cases where no notice is required, the payment should be made not later than the next working day after the termination.

**386.** Similar legal provisions exist in other countries stipulating that any outstanding wage payments must be settled as soon as employment ceases. This is the case, for instance, in *Benin*,<sup>129</sup> *Congo*,<sup>130</sup> *Mauritania*<sup>131</sup> and *Senegal*,<sup>132</sup> although in disputed cases the employer may obtain authorization from the labour court to retain provisionally all or part of the attachable fraction of the sums payable. In the United States,<sup>133</sup> some state labour laws require the payment of final paychecks immediately upon termination or at the time of discharge.

<sup>123</sup> (1), s. 97. The legislation in the *Russian Federation* (1), s. 140 and *Ukraine* (1), s. 116, provides that in case of the dismissal of a worker, all amounts due should be paid on the day of discharge, or if the worker did not work on that day, not later than the following day upon the presentation by the dismissed worker of a settlement request. If a dispute arises with regard to the amount of wages due, the enterprise is bound to pay at least the non-disputed amount.

<sup>124</sup> (2), s. 11.

<sup>125</sup> (1), s. 104; (2), s. 19(7).

<sup>126</sup> (1), s. 108.

<sup>127</sup> (1), s. 11(7). See also *Ghana* (1), s. 33(8).

<sup>128</sup> (2), s. 31(4).

<sup>129</sup> (1), s. 222. This is also the case in *Burkina Faso* (1), s. 113; *Cameroon* (1), s. 68(3); *Central African Republic* (1), s. 105; *Chad* (1), s. 261; *Comoros* (1), s. 104; *Côte d'Ivoire* (1), s. 32(7); *Djibouti* (1), s. 100; *Gabon* (1), s. 152; *Guinea* (1), s. 215; *Mali* (1), s. L.103; *Niger* (1), s. 162; *Rwanda* (1), s. 97; *Togo* (1), s. 96bis. In *Zimbabwe* (1), s. 13(1), all wages and benefits due upon termination of employment must be paid as soon as reasonably practicable after the worker's dismissal, resignation, incapacitation or death, as the case may be. In *Finland* (1), Ch. 2, s. 14, the law provides that if payment of a debt arising from the termination of the employment relationship is delayed, the employee is entitled to full pay for the waiting days up to a maximum of six calendar days. See also *China* (1), s. 9, and *Greece* (1), s. 655.

<sup>130</sup> (1), s. 88.

<sup>131</sup> (1), s. 90.

<sup>132</sup> (1), s. L.115.

<sup>133</sup> See, for instance, *Arkansas* (8), s. 11-4-405(a), (b); *Hawaii* (16), s. 388-3; *Illinois* (18), s. 115/5; *Massachusetts* (27), s. 148; *Missouri* (32), s. 290.110; *Nevada* (35), s. 608.020. Similarly, in *Oregon* (45), s. 652.140, payment is due no later than the end of the first business day after the discharge.

**387.** In other countries, the law distinguishes between the end of an employment contract and the termination of an employment relationship at the worker's own initiative. In Bahrain,<sup>134</sup> Egypt<sup>135</sup> and the Syrian Arab Republic,<sup>136</sup> wages and all other amounts due to a worker whose employment has been terminated must be paid without delay or before the end of the next work day, except where the worker leaves employment of his own accord, in which case the employer may settle any dues within the next seven days. In Malaysia,<sup>137</sup> upon normal termination of a contract or where an employer terminates the contract without notice, payment of any wages due has to be made not later than the day of termination, whereas in the case of an employee terminating the contract without notice, payment must be made not later than the third day after the day on which the contract was terminated. In Mauritius,<sup>138</sup> in the event of termination without notice, any remuneration due must be paid not later than two weekdays after the termination. In the United States,<sup>139</sup> some state labour laws provide that, when an employee is discharged from the service of an employer, all wages due must be paid immediately upon separation or no later than the next business day or within 24 hours. In contrast, when an employee voluntarily quits the service of an employer, he must receive any outstanding pay in full on the next regular pay day.

**388.** It should be noted that even in those cases where no immediate payment on the day of termination is required, existing regulations provide for

<sup>134</sup> (1), s. 72. This is also the case in *Libyan Arab Jamahiriya* (1), s. 32(4); Oman (1), s. 56; Qatar (1), s. 30; Saudi Arabia (1), s.117; Singapore (1), ss. 22, 23(2). Similarly, in *Yemen* (1), s. 65, payment is due on the day of termination unless the worker voluntarily leaves the service, in which case the wages must be paid within six days of the date of the worker leaving the service. Moreover, in the Canadian province of Alberta (4), ss. 9, 10, when an employer or an employee terminates employment by giving a termination notice, earnings must be paid not later than three consecutive days after the last day of employment, whereas in case of termination when no termination notice is required, payment is due within ten consecutive days after the last day of employment. In the province of British Columbia (6), s. 18, any outstanding payment must normally be paid 48 hours after the employer terminates the employment or within six days when the employee terminates the employment.

<sup>135</sup> (1), s. 38.

<sup>136</sup> (1), s. 48.

<sup>137</sup> (1), ss. 20, 21.

<sup>138</sup> (1), s. 11.

<sup>139</sup> This is the case, for instance, in Colorado (10), s. 8-4-104(1)(a), (b); Connecticut (11), s. 31-71c(a), (b); District of Columbia (14) s. 32-1303; Montana (33), s. 39-3-205(1), (2); Utah (52), s. 34-28-5(1), (2). The situation is similar in Alaska (5), s. 23.05.140(b); Arizona (7) s. 23-353(A), (B); New Hampshire (36), s. 275:44(I), (II); Texas (51), s. 61.014; and West Virginia (57), s. 21-5-4(b), (c), where in the case of dismissal an employee must be paid all wages and compensation due within three to six working days, whereas in the case of resignation, payment is due at the next regular pay day.

the final settlement of all outstanding wage payments within a very short period of time, normally not exceeding one week from the date of termination. For example, in the *Democratic Republic of the Congo*<sup>140</sup> and *Sri Lanka*,<sup>141</sup> any amount remaining due under a contract of employment on the termination of the worker's service is payable within the next two working days. In Thailand,<sup>142</sup> upon termination of employment the employer is bound to pay the employee all wages, overtime pay, holiday pay and holiday overtime pay to which the employee is entitled within three days from termination, while in Luxembourg,<sup>143</sup> any outstanding payment must be made within five days from termination. In *Israel*,<sup>144</sup> upon cessation of employment, the worker's wage has to be paid at the time at which it would have normally become payable if the worker had continued to be employed.

**389.** In *Iraq*<sup>145</sup> and *Sudan*,<sup>146</sup> the worker must receive all entitlements within one week from the date of termination of the contract of employment. In Canada,<sup>147</sup> depending on the jurisdiction and on the circumstances, the time

<sup>140</sup> (1), s. 81. See also *India* (1), s. 5(2); (3), s. 21(1)(ii).

<sup>141</sup> (1), s. 19(1)(c); (2), s. 2(c).

<sup>142</sup> (1), s. 70. The situation is similar in the Australian state of Queensland (7), s. 393(6).

<sup>143</sup> (2), s. 40(2).

<sup>144</sup> (1), s. 12. Similarly, in *Belgium* (1), s. 11, *Malta* (1), s. 28(2), and United Kingdom: Gibraltar (11), s. 19(3), any outstanding wage payment is to be made without delay and in any event by the first pay day following the termination of the contract of employment. In the United States, several state laws provide for payment of all wages due on the next regularly scheduled pay day; see, for instance, Delaware (13), s. 1103(a); Kansas (21), s. 44-315; New Jersey (37), s. 34:11-4.3; North Carolina (40), s. 95-25.7 and (41), s. 13-12.0308; North Dakota (42), s. 34-14-03; Oklahoma (44), s. 40-165.3; Rhode Island (47), s. 28-14-4(a); South Dakota (49), ss. 60-11-10, 60-11-11; Virginia (54), s. 40.1-29(A.1); Washington (55), s. 49.48.010; Wisconsin (58), s. 109.03(2). In other states, any unpaid wages must be paid by the earlier of the next regularly scheduled pay day or a period of ten to 15 days following the date of dismissal or termination; see, for instance, Idaho (17), s. 45-606; Kentucky (22), s. 337.055; Louisiana (24), s. 631(A)(1)(a); Maine (25), s. 626. Moreover, in Wyoming (59), s. 27-4-104(a), wages must be paid within five days of the date of termination, while in Michigan (28), s. 408.475, payment is due as soon as the amount can with due diligence be determined.

<sup>145</sup> (1), s. 48. Similarly, in *Viet Nam* (1), s. 43; (2), s. 11, each party is responsible for the settlement of all outstanding payments to the other party within seven days from the date of termination of a labour contract, although in special cases this period may be extended to 30 days. In *Japan* (2), s. 23(1), upon a worker's death or leaving of employment, the employer is required to pay any wages, security deposits, savings and other funds and valuables to which the worker is rightfully entitled within seven days. Similarly, in the *Republic of Korea* (1), s. 36, in the case of the worker's retirement, payment of all wages, compensations and other money or valuables must be made within 14 days.

<sup>146</sup> (1), s. 35(7).

<sup>147</sup> In *Newfoundland and Labrador* (9), s. 33(2), and *Ontario* (14), s. 11(5), payment is due within one week, in *Manitoba* (7), s. 86(1)(b) within ten days, and in *Saskatchewan* (17), s. 48(2)



frame within which the final settlement of wages must take place varies from seven to 30 days following termination. Finally, in *Argentina*,<sup>148</sup> *Cuba*,<sup>149</sup> *Guatemala*,<sup>150</sup> *Islamic Republic of Iran*,<sup>151</sup> *Nicaragua*,<sup>152</sup> *Paraguay*<sup>153</sup> and *Turkey*,<sup>154</sup> the legislation merely requires wages and other workers' benefits to be paid in full in the event of termination of a contract of employment, without expressly providing that such payment be made promptly or within a reasonably short period of time. Mention should also be made of *Ecuador*, where according to the Government's earlier reports, the final settlement of wages upon termination of the employment relationship is regulated under the internal rules of each enterprise.

**390.** In other countries, the national laws and regulations do not contain provisions directly regulating the question of the final settlement of wages, other than providing for dispute settlement procedures applicable in cases of unpaid wages. This is the case, for example, in *Algeria*, *Austria*, *Bahamas*, *Bulgaria*, *Dominica*, *Lebanon*, *Madagascar*, *Mexico*, *Philippines*, *Poland*, *Romania* and *Tunisia*. It is assumed in such cases that the obligations placed on establishments to pay wages at the proper time effectively ensure prompt settlement of any wage due upon the termination of employment.<sup>155</sup>

within 14 days after the day of termination. In addition, in New Brunswick (8), s. 37, all wages earned but not yet paid at the time of termination must be paid not later than at the time the employee would have been paid had he continued to be employed and in no case later than 21 days after the last day of employment, while in Prince Edward Island (15), s. 30(5), the law stipulates that any pay to which an employee is entitled on termination of employment must be paid by the employer no later than the last day of the next pay period.

<sup>148</sup> (1), ss. 156, 231-233, 245-247, 250-251.

<sup>149</sup> (1), s. 60. However, the Government reports that outstanding payments are settled immediately upon termination of the employment contract.

<sup>150</sup> (2), s. 99.

<sup>151</sup> (1), s. 22.

<sup>152</sup> (2), ss. 42, 77.

<sup>153</sup> (1), s. 244.

<sup>154</sup> (1), s. 26.

<sup>155</sup> For example, in *France*, there is no legal provision expressly requiring the prompt settlement of all wages due upon the termination of a contract of employment, but the Government has taken the view that this is implied by the application of the general principles of French law. The Government of the *Netherlands* has stated that, in view of the maximum wage intervals prescribed in the national legislation, it is not considered necessary to set out any specific provisions regarding the final settlement of all wages due upon the termination of a contract of employment. The situation is similar in *Spain* where, according to information supplied by the Government, the final settlement of wages is regulated under the general provisions dealing with pay intervals. In *Italy*, the question is normally dealt with in collective agreements and the Government has reported that in the absence of specific legal provisions the presumption is that payment of all amounts due is to be made as promptly as possible.

In *Barbados*<sup>156</sup> and *Guyana*,<sup>157</sup> the law prescribes that every employee is entitled to recover from the employer the whole or so much of the wages earned, exclusive of sums lawfully deducted, as may not have been actually paid by the employer in money. In New Zealand,<sup>158</sup> where there has been a default in payment to an employee of any wages or other money payable under an employment agreement, the sums due may be recovered by the employee through an action taken in the Employment Relations Authority, which is an investigative body that has the role of resolving employment relationship problems.

**391.** In recent years, the Committee has been confronted with a number of cases of non-compliance with Article 12, paragraph 2, of the Convention, consisting of the failure of state authorities to take appropriate action to ensure the final settlement of workers' wage claims upon termination of their contracts. The most serious of these cases relate to the situation of migrant workers who in some cases have been driven out of the receiving country in large numbers for economic or political reasons, without being paid the wages that they have already earned. For example, in October 2000, it was reported by the International Confederation of Free Trade Unions (ICFTU) that thousands of sub-Saharan migrant workers in the *Libyan Arab Jamahiriya*, mostly Nigerians and Ghanaians, had been expelled from the country without receiving the wages owed to them, and that the Libyan authorities had suggested to the deported workers that they should claim their unpaid wages from their own government. The Committee emphasized, in this regard, that the obligation arising out of Article 12, paragraph 2, of the Convention is incumbent upon the employer(s) concerned and that the Government could not therefore ask workers to address their requests for the final settlement of their wages to their governments, but must ensure that the wages due are duly paid in full.<sup>159</sup>

**392.** A few years earlier, in 1995, thousands of Palestinian workers were forced to leave the *Libyan Arab Jamahiriya* without receiving any payment of

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<sup>156</sup> (1), s. 6. Similarly, in *Cyprus*, wages due on termination of a contract of employment may be recovered by civil action in case of default on the part of the employer.

<sup>157</sup> (1), s. 19.

<sup>158</sup> (5), ss. 131(1), 157, 161(1)(g). The Government has indicated that there is no legislative provision laying down when the final settlement of wages upon termination of employment must occur but that, as a matter of practice, any outstanding wages and holiday pay are paid forthwith. Similarly, the Government of Germany has reported that there are no particular legislative provisions reflecting this Article of the Convention, but any worker who upon termination of the employment contract is entitled to arrears of earned income can bring these claims before a labour tribunal.

<sup>159</sup> See RCE 2001, 359 (*Libyan Arab Jamahiriya*) and RCE 2002, 331 (*Libyan Arab Jamahiriya*).

their entitlements. The situation was considered by the Conference Committee in June 1996 and the Government confirmed on this occasion its intention of fully meeting all the entitlements of those Palestinians who had been working with valid employment permits and formal contracts.<sup>160</sup> In this connection, the Committee of Experts has pointed out that the Convention applies to all persons to whom wages are paid or payable, irrespective of the characteristics of their contracts, formal or non-formal, and that the Government is therefore under the obligation to ensure the final settlement of wages at the expiry of a contract for all Palestinian workers, including those without employment permits and formal contracts.<sup>161</sup>

**393.** A similar situation arose in *Iraq* in 1991 with regard to foreign workers who left the country both before and after the invasion of Kuwait. According to the Government, the workers who left following the imposition of the embargo, which resulted in the freezing of Iraqi assets in foreign banks, received their wages in conformity with the law with the exception of the percentage of their wages which, under the terms of their contracts, had to be deposited in foreign currency. This case was discussed in June 1992 by the Conference Committee, which pointed out that under the provisions of the Convention foreign workers should not be the victim of political difficulties in the region between the Government and other countries and that therefore the Government remained responsible for the settlement of outstanding payments to foreign workers irrespective of the embargo and the freezing of Iraqi assets.<sup>162</sup>

**394.** In November 1990, a representation was made by the Federation of Egyptian Trade Unions under article 24 of the Constitution alleging non-observance of the Convention by *Iraq* for failure to honour the labour contracts of Egyptian workers employed in *Iraq* both before and after the invasion of Kuwait. The Government was reportedly prepared to reimburse all the amounts due in the form of barter, i.e. in oil or any other goods requested by the Egyptian Government. The Governing Body came to the conclusion that the non-payment of all or part of wages at regular intervals, for whatever reasons, was not in conformity with Article 12 of the Convention, even more so as part of the arrears

<sup>160</sup> See ILC, 83rd Session, 1996, *Record of Proceedings*, p. 14/87.

<sup>161</sup> See RCE 1996, 180 (*Libyan Arab Jamahiriya*) and RCE 1997, 223 (*Libyan Arab Jamahiriya*). It should also be recalled that, following the expulsion of many thousands of foreign workers, in particular workers of Egyptian and Tunisian nationality, from *Libyan Arab Jamahiriya* in August 1985, a complaint and a representation were filed by the Government of *Tunisia* and the Egyptian Trade Union Federation respectively alleging non-observance of the Convention by *Libyan Arab Jamahiriya*. The two procedures were considered together for a time. The dispute was finally settled through a series of discussions under the Office's auspices, as a result of which the complaint was withdrawn in 1987 and the representation was withdrawn some four years later, in 1991; see GB.251/20/7; GB.240/14/20; GB.232/17/32.

<sup>162</sup> See ILC, 79th Session, 1992, *Record of Proceedings*, p. 27/71.

was not provoked by the sanctions imposed on *Iraq*, but preceded the decision to apply an embargo. It also considered that, despite its limited alternatives at the time, the Government of *Iraq* should have found a means of ensuring that the workers receive the payments due to them.<sup>163</sup>

**395.** Significant problems concerning the settlement of outstanding wage payments were also experienced by Senegalese workers employed in *Mauritania*, who fled the country following the violent incidents of April 1989 and the ethnic tensions between the two countries. In response to the representation made by the National Confederation of Workers of Senegal (CNTS) in 1990 under article 24 of the Constitution, alleging non-observance of the Convention by *Mauritania*, the Government argued that the Senegalese workers were repatriated at the express request of the Senegalese authorities and that employers could not be expected to pay wages to workers who had abandoned their duties and who were no longer present on Mauritanian territory. In its conclusions, the Governing Body noted that under Article 12, paragraph 2, of the Convention, a final settlement of the wages due must be made, whatever the cause of the termination of the employment contract, and also that the question of the nationality of the wage earner did not affect in any manner the application of the Convention.<sup>164</sup>

**396.** The Conference Committee examined the same question in June 1995 and urged the Government of *Mauritania* to make serious and meaningful efforts to settle the wage entitlements of the aggrieved workers by receiving technical assistance from the ILO in the matter of the enforcement of the national law, which provided for the payment of wages due.<sup>165</sup> Given the Government's persistent failure to provide concrete proof of any progress in settling the wage debts to the workers concerned, even though the Government has recently alleged that all persons obliged to leave the country in 1989 have recovered their wages due since 1996, the Committee of Experts has recalled the conclusions adopted by the Governing Body to the effect that, in view of the circumstances in which the workers concerned left the country, it was very probable that final settlement of the wages due could not be made in accordance with the relevant provisions of the Convention or of national legislation, and that, consequently, the Government should take all the necessary measures to

<sup>163</sup> See GB.250/15/25, paras. 20-24. The Committee of Experts has been commenting on the measures to be taken following the recommendations of the tripartite committee referred to above and has urged the Government of *Iraq* to take appropriate steps to ascertain the number of workers concerned and the amounts owed to them, to effect payment of the amounts so determined and to report accordingly on the progress achieved; see RCE 1993, 246 (*Iraq*); RCE 1995, 229 (*Iraq*); RCE 2001, 358 (*Iraq*).

<sup>164</sup> See *Official Bulletin*, Vol. LXXIV, 1991, Supplement 1, Series B, paras. 68-71, p. 15.

<sup>165</sup> See ILC, 82nd Session, 1995, *Record of Proceedings*, p. 24/99.

establish or have established the amounts due, and to make or have made the final settlement of wages due.<sup>166</sup>

**397.** Another case which has been the subject of observations by the ILO supervisory bodies arose in the context of a dispute between a multinational enterprise and its Congolese employees, who were dismissed when the company ceased all of its operations on the territory of *Congo* without paying the wages and the various supplements and benefits due. In 1994, the International Organization of Energy and Mines (OIEM) made a representation alleging non-observance of the Convention by *Congo* and reproaching the state authorities for not having taken appropriate action against the company's management for the infringement of the labour legislation. The Governing Body concluded that the Government had failed to ensure the effective application of the relevant provisions of the Convention and to discharge its obligation of preventing and punishing infringements by failing to use the legal means at its disposal in order to compel the defaulting employer to comply with the legislation in force. It recalled, in this respect, that it is for the competent authorities to take the necessary measures when the legislation is not applied and that public order may be jeopardized where they fail to do so.<sup>167</sup> Since the adoption by the Governing Body of these recommendations in 1996, the Committee of Experts has been following developments in the situation and urging the Government to adopt all the necessary measures to enable the employees concerned to recover promptly all sums due to them.<sup>168</sup>

**398.** In conclusion, the Committee wishes to emphasize that the principle of the regular payment of wages, as set out in Article 12 of the Convention, finds its full expression not only in the periodicity of wage payments, as may be regulated by national laws and regulations or collective agreements, but also in the complementary obligation to settle swiftly and in full all outstanding payments upon the termination of the contract of employment.<sup>169</sup>

<sup>166</sup> See RCE 1996, 181 (*Mauritania*) and RCE 2002, 332 (*Mauritania*).

<sup>167</sup> See GB.265/12/6, paras. 21-24. See also GB.268/14/6 on a related representation filed in 1997 by the Trade Union Confederation of Congo Workers (CSTC).

<sup>168</sup> See RCE 1997, 222 (*Congo*); RCE 1998, 208 (*Congo*); RCE 2001, 354 (*Congo*). The Committee has been addressing similar observations to other countries as regards the steps taken to ensure the application of the Convention with respect to final settlements upon termination of work contracts; see, for instance, RCE 1995, 227 (*Côte d'Ivoire*).

<sup>169</sup> For instance, the Committee has addressed direct requests in this sense to *Bolivia* in 1995 and *Venezuela* in 2001.

### 3. Place and time of the payment of wages

#### 3.1. Payment of wages on working days and at or near the workplace

**399.** Article 13, paragraph 1, of the Convention requires the payment of cash wages to be made on working days only and at or near the workplace, except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award, or where other arrangements known to the workers concerned are considered more appropriate.<sup>170</sup>

**400.** The Committee notes that Article 13, paragraph 1, of the Convention leaves considerable flexibility as to the means by which it is implemented since, apart from provisions in laws, regulations, collective agreements or arbitration awards, reliance may be placed upon other appropriate arrangements regarding the time and place of wage payment. The question possibly arises as to whether the payment of wages by postal or bank transfer would be consistent with the requirement of payment at or near the workplace. The Committee takes the view that any formal arrangements regulating the payment of wages by postal or bank transfer would appear to fall well within the exceptions permitted by Article 13, paragraph 1 (that is, exceptions “provided by national laws or regulations”), and would therefore pose no problem in regard to this Article.<sup>171</sup>

**401.** At another level, the requirement set out in Article 13, paragraph 1, of the Convention would seem to be of particular relevance with regard to certain systems of compulsory deferred payment of wages practised in respect of migrant workers. For instance, under the system which was reportedly formerly applied to migrant workers employed in South Africa and recruited from Lesotho, Malawi and Mozambique, 60 to 90 per cent of the wages earned were not paid directly to the migrant workers, but were transferred to their home countries as deferred pay which could only be received as a lump sum upon the completion of their contract. In this respect, the Committee considers that attention should be given first and foremost to the voluntary character of the

<sup>170</sup> In the text initially proposed by the Office, provision was made for payment on working days and at or near the workplace “except as may otherwise be authorized by the competent authority”; see ILC, 31st Session, 1948, Report VI(c)(2), pp. 83-84, 91. This wording was later changed to “except where otherwise appropriate”, but this was considered even more far-reaching and the text was once again redrafted to include a reference to exceptions regulated by law, agreement or award. The provision was further revised to ensure that other methods might be used only on condition that workers know in advance, by whatever means are considered appropriate, the place and dates of payment; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 463, and ILC, 32nd Session, 1949, *Record of Proceedings*, p. 509.

<sup>171</sup> This question was considered in an informal opinion given by the Office in 1974 at the request of the Government of Japan.

deferred pay system, as well as to standards concerning the protection of wages, in particular the requirement of paying wages regularly and at the workplace.<sup>172</sup> Reference should be made, in this respect, to the findings of the Commission of Inquiry regarding the application of the Convention by the *Dominican Republic* in respect of Haitian workers employed in sugar plantations. With respect to the imposed system of deferred payment of that part of cane-cutters' remuneration designated as "incentive pay", the Commission recommended its abolition and the incorporation of "incentive pay" into workers' wages to be paid regularly on the days fixed for that purpose. The Commission recognized that the plantations had an interest in being able to keep their workers for the duration of the harvest, and might wish to offer a material inducement to that end, but cautioned that "a bonus paid to a worker for staying throughout the harvest need not conflict with the Convention under consideration". The Commission further recognized that it was desirable to assist seasonal workers on the sugar plantations to put aside savings for their return home, on condition that this was done through the introduction of a voluntary savings scheme.<sup>173</sup>

**402.** Analysis of the available information shows that in almost all countries there are regulations relating to the time and place of wage payments. In most countries, these regulations specify that wages must be paid at the place of employment where the actual work is performed and on working days only or, as is sometimes worded, they must not be paid on rest days. In certain cases, it is specified that wages may only be paid during working hours, and it is also permitted for wages to be paid near, rather than just at the workplace. This is the case, for instance, in *Austria*,<sup>174</sup> *Bahamas*,<sup>175</sup> *Bulgaria*,<sup>176</sup> *Cuba*,<sup>177</sup>

<sup>172</sup> For more on the deferred pay systems practised in South Africa, see W.R. Böhning (ed.): *Black Migration to South Africa*, ILO, 1981, pp. 117-130.

<sup>173</sup> See the Report of the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance of certain international labour Conventions by the Dominican Republic and Haiti with respect to the employment of Haitian workers on the sugar plantations of the Dominican Republic, *Official Bulletin*, Vol. LXVI, 1983, Special Supplement, Series B, paras. 541-542, p. 159.

<sup>174</sup> (7), s. 22(e). This is also the case in *Argentina* (1), s. 129; *Belgium* (1), ss. 13, 14; *Bolivia* (1), s. 53; *Botswana* (1), s. 79(1); *Ecuador* (2), ss. 86, 96; *France* (1), s. R.143-1; *Greece* (3), s. 2(1), (2); *Guyana* (1), s. 18(4); *Hungary* (1), s. 158(1), (2); *Iraq* (1), s. 42(1); *Kenya* (1), s. 4(2); *Lebanon* (1), s. 47; *Libyan Arab Jamahiriya* (1), s. 32; *Mauritius* (1), s. 8(4); *Republic of Moldova* (2), s. 19(1); (1), s. 103; *Panama* (1), s. 153; *Sudan* (1), s. 35(5), (6); *Swaziland* (1), s. 50(1); *Syrian Arab Republic* (1), s. 47; *United Republic of Tanzania* (1), s. 61(2); *Yemen* (1), s. 61; *Zambia* (1), s. 44(2).

<sup>175</sup> (1), s. 63(1). Contrary to previous legislation, the new Employment Act makes no provision as to the place of payment.

<sup>176</sup> (1), s. 270(1). No specific provision is made, however, for the payment of wages on working days only.

<sup>177</sup> (1), ss. 123, 124.

*Egypt*,<sup>178</sup> *Islamic Republic of Iran*,<sup>179</sup> *Malta*,<sup>180</sup> *Nicaragua*,<sup>181</sup> *Philippines*,<sup>182</sup> *Tunisia*<sup>183</sup> and *Venezuela*.<sup>184</sup> Specific legislative provisions requiring wages to be paid on working days and at the workplace are also found in Bahrain,<sup>185</sup> Kuwait,<sup>186</sup> Rwanda,<sup>187</sup> Saudi Arabia<sup>188</sup> and the United Arab Emirates.<sup>189</sup>

**403.** In a number of countries, such as *Congo*,<sup>190</sup> *Gabon*<sup>191</sup> and *Senegal*,<sup>192</sup> the national legislation prescribes that the wages have to be paid, save in the case of *force majeure*, at the workplace or in the employer's office, if this is near the workplace, and may in no case be paid on the day on which the worker is entitled to rest. In the *Netherlands*<sup>193</sup> and *Suriname*,<sup>194</sup> the Civil Code provides that, unless the place of payment of wages is fixed by the contract or rules of employment or by custom, payment shall be effected at the place of work, or at the employer's office (if this is near the place where the majority of employees reside), or at the employee's home, at the choice of the employer.

<sup>178</sup> (1), s. 34.

<sup>179</sup> (1), s. 37. The Labour Code contains no provision on the place of wage payment, but the Government maintains that the requirement that wages should be paid during working hours implicitly means that the payment should be made at or near the workplace.

<sup>180</sup> (1), s. 19(3). There does not appear to exist, however, any provision in the labour legislation concerning the place of payment.

<sup>181</sup> (1), s. 82(2); (2), 86.

<sup>182</sup> (1), s. 104; (2), Bk. III, Rule VIII, s. 4(a). Payment in a place other than the workplace may be effected only: (i) if natural conditions render such payment impossible; (ii) when the employer offers free transport; or (iii) under any other analogous circumstances provided that the time spent by the employees in collecting their wages is considered as compensable working time.

<sup>183</sup> (1), s. 142. There appears to be no provision in the Labour Code relating to the place of wage payment.

<sup>184</sup> (1), ss. 151, 152.

<sup>185</sup> (1), s. 68.

<sup>186</sup> (1), s. 29.

<sup>187</sup> (1), s. 92.

<sup>188</sup> (1), s. 116.

<sup>189</sup> (1), s. 55.

<sup>190</sup> (1), s. 87(4), (5). This is also the case in *Benin* (1), s. 222(4); *Burkina Faso* (1), s. 112(4); *Cameroon* (1), s. 68(5); *Central African Republic* (1), s. 104(3); *Chad* (1), s. 258; *Comoros* (1), s. 103(4), (5); *Côte d'Ivoire* (1), s. 32.2; *Djibouti* (1), s. 99(4); *Guinea* (1), ss. 214, 215(4); *Mali* (1), s. L.102; *Mauritania* (1), s. 89(4), (5); *Niger* (1), s. 159; *Togo* (1), s. 95(4).

<sup>191</sup> (1), s. 151(2).

<sup>192</sup> (1), s. L.114(4), (5).

<sup>193</sup> (1), s. 1638K.

<sup>194</sup> (1), s. 1614K.



**404.** In *Israel*,<sup>195</sup> the law provides that payment is to be made at the place of work and not later than two hours after the termination of the work, unless the worker is employed on a late shift. Similarly, in *Mexico*,<sup>196</sup> *Norway*<sup>197</sup> and *Paraguay*,<sup>198</sup> salaries must be paid at or near the workplace during working hours or immediately after the end of working hours. In the *Russian Federation*,<sup>199</sup> *Ukraine*<sup>200</sup> and *Venezuela*,<sup>201</sup> the Labour Code provides that if pay day falls on a public holiday or a weekend, labour wages must be paid on the preceding day. In contrast, in *Argentina*,<sup>202</sup> where pay day falls on a non-working day, payment shall be made on the next working day.

**405.** In certain countries, the general principle of wage payment on working days and at or near the workplace applies unless it is otherwise provided in national regulations, collective or individual agreements or arbitration awards. In the *Czech Republic*<sup>203</sup> and *Slovakia*,<sup>204</sup> for instance, wages are to be paid during working time and at the workplace, unless otherwise agreed in the employment contract or collective agreement. In *Botswana*,<sup>205</sup> payment may be made elsewhere than at or near the place of employment with the prior consent of the employee concerned. In *Guyana*,<sup>206</sup> wages are to be paid

<sup>195</sup> (1), s. 15. Similarly, in *Chile* (1), s. 56, payment is due on a working day, that is from Monday to Friday, at the workplace and within one hour of the termination of the work, unless otherwise agreed by the parties to the employment relationship.

<sup>196</sup> (2), ss. 108, 109. This is also the case in *Brazil* (2), s. 465; *Colombia* (1), s. 138(1); *Costa Rica* (1), s. 170; *Dominican Republic* (1), s. 196; *El Salvador* (2), ss. 128, 131; *Guatemala* (2), s. 95; *Guinea-Bissau* (1), ss. 103(1), 104(3); *Honduras* (2), s. 369.

<sup>197</sup> (1), s. 55(1). See also *Mozambique* (1), s. 53(1)(b).

<sup>198</sup> (1), s. 236.

<sup>199</sup> (1), s. 136(8). This is also the case in *Azerbaijan* (1), s. 172(3); *Belarus* (1), ss. 73, 75; *China* (1), s. 7; *Estonia* (2), s. 33; *Finland* (1), Ch. 2, s. 15; *Kyrgyzstan* (1), ss. 233(4), 235(1); *Tajikistan* (1), s. 108.

<sup>200</sup> (2), s. 24(1), (3).

<sup>201</sup> (1), s. 151.

<sup>202</sup> (1), s. 129. This is also the case in *Slovenia* (1), s. 134(3).

<sup>203</sup> (1), s. 120(3). This is also the case in *Cape Verde* (1), s. 120(1); *Estonia* (2), s. 31(2); *Guinea-Bissau* (1), s. 103(1); *Lithuania* (2), s. 11. Similarly, in *Poland* (1), s. 86(1), the place, date and time of payment are to be specified in the works regulations, while in *Indonesia* (2), s. 16, the wage is to be paid at the place where the work is usually performed, or at the office of the enterprise, unless otherwise determined in the contract or company regulations.

<sup>204</sup> (1), s. 130(4).

<sup>205</sup> (1), s. 79(1). Similarly, in *Singapore* (1), s. 25(1), payment of salary must be made on a working day and during working hours at the place of work or at any other place agreed upon between the employer and the employee, while in the *Democratic Republic of the Congo* (1), s. 79(2), wages are to be paid at the agreed time and place.

<sup>206</sup> (1), s. 18(4).

on working days only and at or near the workplace, except where there exist more appropriate arrangements. In *Mauritius*,<sup>207</sup> an employer may pay remuneration to a worker other than within working hours and at or near the place of work only with the Permanent Secretary's written consent. In *Spain*,<sup>208</sup> the national legislation merely prescribes that wages shall be paid punctually on the agreed or customary date and at the agreed or customary place.

**406.** The issue of the payment of wages on working days and at or near the workplace is not specifically addressed in the general labour legislation of *Algeria, Barbados, Cyprus, Dominica, Malaysia, Nigeria, Romania, Sri Lanka, Turkey, Uganda* and *Uruguay*.<sup>209</sup> Nor are any relevant provisions contained in the laws and regulations of Croatia, Ghana, Japan, Jordan, Republic of Korea, Namibia and Peru. In certain countries, such as Seychelles<sup>210</sup> and Thailand,<sup>211</sup> national laws or regulations require the payment of wages in cash to be made at or near the place of employment, but make no specific provision for payment on working days only. In contrast, the wage protection legislation in India,<sup>212</sup> Morocco<sup>213</sup> and Switzerland,<sup>214</sup> stipulates that all payments of wages must be made on a working day, but contains no regulation concerning the place of payment. In Australia, there are no specific legislative provisions dealing with the time or place of payment. The only relevant provision to be found in many industrial awards at the state level is the requirement that employees kept waiting for their pay on pay day must be paid at ordinary or overtime rates for the time spent, except where the delay occurs for reasons beyond the employer's

<sup>207</sup> (1), s. 8(4). Similarly, in Qatar (1), s. 29(3), the payment of wages must be effected on a work day and during working hours and at the usual workplace, or at any other place approved by the Director of Labour.

<sup>208</sup> (1), s. 29. Similarly, in Slovenia (1), s. 135(1), payment is due by the end of the day of payment at the usual place of payment.

<sup>209</sup> However, according to the Government's report, as a matter of practice, the payment of wages is generally made at the workplace or at a bank near the workplace or the worker's residence.

<sup>210</sup> (1), s. 32(1)(a).

<sup>211</sup> (1), ss. 55, 77. The law further specifies that, if the payment is to be made elsewhere, the written consent of the employee must be obtained. See also Viet Nam (1), s. 59(1).

<sup>212</sup> (1), s. 5(4). This is also the case in Myanmar (1), s. 5(4); United Kingdom: Gibraltar (11), s. 17(2); Jersey (17), s. 10; *Montserrat* (21), s. 16(1); Virgin Islands (22), s. C34(2).

<sup>213</sup> (1), s. 8.

<sup>214</sup> (2), s. 323b.

control.<sup>215</sup> In the United States,<sup>216</sup> at the federal level, there is no provision that sets any specific requirements on time and place of payment of wages, while at the state level, there is limited number of provisions requiring wages to be paid at the employee's regular place of employment during regular employment hours unless otherwise agreed upon by the employer and the employee. In many cases, state laws merely provide that, if the regular pay day of an employee is a non-workday, an employer has to pay the employee on the preceding workday. Similarly, in Canada,<sup>217</sup> there exist few legislative provisions specifically requiring the payment of wages on a working day and at the workplace.

### **3.2. Prohibition of the payment of wages in taverns, retail shops and places of amusement**

**407.** In the interest of protecting the workers' earnings against possible abuse, the Convention prohibits the payment of wages in certain places, such as taverns or similar establishments, and provides that, if necessary, such prohibition should be extended to such other places as commercial shops and places of amusement. Article 13, paragraph 2, therefore calls for the existence of a specific provision as regards taverns or similar establishments, enforceable by adequate penalties or other appropriate remedies. The means used to enforce such a prohibition is of course a question for the competent authority to decide, the only condition being that whatever arrangements are considered appropriate to achieve this objective must be effective. As for the extension of this prohibition to shops, retail stores and places of amusement, this is required only

<sup>215</sup> See, for instance, the Tasmanian Child Care and Children's Services Award, s. 3(a); Transport Workers General Award, s. 32(h); Automotive Industries Award, Part III, s. 7(c); Cleaning and Property Services Award, s. 23. However, payment in full during ordinary working hours is expressly provided for in certain awards, such as the Clothing Industry Award, s. 23(a); Civil Construction and Maintenance Award, s. 28(b); Wireworking Award, s. 24(c); Dentists Award, s. 21; Independent Schools (Teachers) Tasmania Award, Part III, s. 4(a). More rarely, provision is made for the payment of wages at the place of employment, for instance in the Entertainment Award, s. 19.

<sup>216</sup> See, for instance, Arkansas (8), s. 11-4-402(b); Connecticut (11), s. 31-71b(b); Delaware (13), s. 1102(b); Iowa (20), s. 91A.3(3); Maryland (26), s. 3-502(b); Massachusetts (27), s. 151; Minnesota (29), s. 181.10; New Jersey (37), s. 34:11-4.2; Texas (51), s. 61.017; Utah (52), s. 34-28-3(1)(c); Wyoming (59), s. 27-4-101(a).

<sup>217</sup> See, for instance, Newfoundland and Labrador (9), s. 34(1); Ontario (14), s. 11(3); Quebec (16) ss. 44, 45; Saskatchewan (17), s. 48(3).

where this appears necessary to prevent abuse, and is therefore a matter to be determined in the light of actual practice.<sup>218</sup>

**408.** In certain countries, effect is given to the requirements of Article 13, paragraph 2, of the Convention by means of a formal prohibition on the payment of wages in places for the sale of spirits, intoxicating liquors or other alcoholic drinks, and similar establishments such as bars and coffee shops. This is the case, for instance, in *Austria*,<sup>219</sup> *Kenya*<sup>220</sup> and *Nicaragua*.<sup>221</sup> In other countries, the payment of wages in places of amusement is also prohibited. In *Hungary*,<sup>222</sup> for example, the payment of wages is prohibited in bars and places of entertainment, while in the *Philippines*,<sup>223</sup> no payment may be made in bars, nightclubs, dance halls and places where money games are played.

**409.** In other countries, however, this prohibition is not limited to establishments where alcohol is consumed and places of entertainment, but extends to any shops or stores for the retail sale of merchandise. The only persons who are not covered by the prohibition against the payment of wages in commercial shops are those normally employed in such shops. This is the case,

<sup>218</sup> An informal opinion to this effect was given by the Office in 1954 at the request of the Government of the Federal Republic of Germany; see *Official Bulletin*, Vol. 37, 1954, p. 390. It should be recalled, in this respect, that the text of this provision was amended at the first Conference discussion specifically for the purpose of making it clear that, while the payment of wages in places where alcoholic drinks are served is categorically prohibited, the restriction in respect of shops and places of amusement is intended as a safeguard against possible abuses in such localities; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 463.

<sup>219</sup> (9), s. 78(6); (10), s. 206(b). This is also the case in *Ghana* (1), s. 53(5); *Greece* (3), s. 2(1); *Guyana* (1), s. 26; *Israel* (1), s. 15; *Netherlands* (3), s. 19(1). Similarly, in the United Kingdom: *Montserrat* (21), s. 14, and *Virgin Islands* (22), s. C34(3), no wage payment may be made within any shop or place for the sale of any spirits, wine, beer or other spirituous or fermented liquor.

<sup>220</sup> (1), s. 4(3).

<sup>221</sup> (2), s. 86.

<sup>222</sup> (1), s. 158(1). This is also the case in *Cape Verde* (1), s. 120(2), and *Guinea-Bissau* (1), s. 103(4).

<sup>223</sup> (2), Bk. III, Rule VIII, s. 4(b). Similarly, in *Namibia* (1), s. 37(e) employers are prohibited from paying any employee in a shop, bottle store or other place where intoxicating liquor is stored or sold or any place of amusement.

for instance, in *Argentina*,<sup>224</sup> *Belgium*,<sup>225</sup> *Côte d'Ivoire*,<sup>226</sup> *Ecuador*,<sup>227</sup> *France*,<sup>228</sup> *Guatemala*,<sup>229</sup> *Mauritius*,<sup>230</sup> *Turkey*<sup>231</sup> and *Venezuela*.<sup>232</sup>

**410.** The legislation in some countries contains no express prohibition of the payment of wages in taverns or other similar establishments, as required under this Article of the Convention. This is the case in *Azerbaijan*, *Belarus*, *Brazil*, *Bulgaria*, *Cuba*, *Cyprus*, *Czech Republic*, *Dominican Republic*, *Italy*, *Kyrgyzstan*, *Republic of Moldova*, *Norway*, *Paraguay*, *Romania*, *Russian Federation*, *Slovakia*, *Spain*,<sup>233</sup> *Sri Lanka*, *Tajikistan*, *Uganda* and *Uruguay*. Nor is this point addressed in the labour laws of Australia, Bahrain, China, Croatia, Indonesia, India, Japan, Republic of Korea, Kuwait, Oman, Qatar, Saudi Arabia, Seychelles, Singapore, Switzerland, Thailand, United Arab Emirates and Viet Nam. The Government of New Zealand has reported that, even though there is no specific legislative provision concerning the time and place of wage payments, the payment of wages in taverns, retail stores or places of amusement is not really an issue in the country as payment is increasingly effected by direct credit to a bank account. Similarly, the Government of Canada has reported that there are no specific provisions in Canadian legislation prohibiting the payment of wages in taverns or similar establishments, in retail stores and places of

<sup>224</sup> (1), s. 129. This is also the case in *Bahamas* (1), s. 63(2); *Barbados* (1), s. 14; *Benin* (1), s. 222(4); *Bolivia* (1), s. 53; *Botswana* (1), s. 86(1); *Burkina Faso* (1), s. 112(4); *Cameroon* (1), s. 68(5); *Central African Republic* (1), s. 104(3); *Chad* (1), s. 258; *Colombia* (1), s. 138(2); *Comoros* (1), s. 103(5); *Congo* (1), s. 87(4); *Costa Rica* (1), s. 170; *Democratic Republic of the Congo* (1), s. 79(3); *Djibouti* (1), s. 99(4); *Dominica* (1), s. 14; *El Salvador* (2), s. 129; *Gabon* (1), s. 151(2); *Guinea* (1), s. 214; *Honduras* (2), s. 369; *Luxembourg* (1), s. 3; *Malaysia* (1), s. 28; *Mali* (1), s. L.102; *Malta* (1), s. 19(3); *Mauritania* (1), s. 89(4); *Mexico* (1), s. 123A-XXVII(d); *Morocco* (1), s. 8; *Niger* (1), s. 159; *Nigeria* (1), s. 3; *Rwanda* (1), s. 92; *Senegal* (1), s. L.114(4); *Swaziland* (1), s. 49; *United Republic of Tanzania* (1), s. 66(1); *Togo* (1), s. 95(4); *Tunisia* (1), s. 142; *Ukraine* (2), s. 24(3); *United Kingdom*: *Gibraltar* (11), s. 17(2); *Zambia* (1), s. 44(4). Similarly, in *Germany* (1), s. 115a, wage payment cannot be made in restaurants and sales points without the authorization of the competent authorities. However, the Government has stated that this provision is deemed outmoded and is to be repealed.

<sup>225</sup> (1), s. 14.

<sup>226</sup> (1), s. 32.2.

<sup>227</sup> (2), s. 96.

<sup>228</sup> (1), s. R.143-1.

<sup>229</sup> (2), s. 95.

<sup>230</sup> (1), s. 8(5).

<sup>231</sup> (1), s. 26.

<sup>232</sup> (1), s. 152.

<sup>233</sup> (14), s. 54; (15), final provisions. By legislation enacted in 1994, the express provision prohibiting the payment of wages in places of amusement, canteens or shops has been repealed. However, according to the Government's earlier reports, it is not customary to pay wages in such places.

amusement, since the situation in Canada does not warrant such prohibitions. In this respect, the Committee wishes to recall that, even though in certain countries there may be little or no evidence of wages being paid in taverns or similar establishments, the Convention categorically prohibits the payment of wages in such places and consequently requires appropriate and effective measures for its implementation.

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**411.** In conclusion, in the Committee's view, the situation with regard to Article 12 of the Convention typifies cases in which there is at times an unfortunate gulf between legislative conformity with a Convention and the effect given in practice to its provisions. Nowhere would these shortcomings appear to be more striking than with regard to the principle of the regular payment of wages. Having reviewed the information available concerning the accumulation of wage arrears in different parts of the world, the Committee deeply regrets that the non-payment or delayed payment of wages appears to have reached alarming proportions in parts of Africa, in Central and Eastern Europe with little or no sign of abatement and is still present in some of the ailing economies in Latin America. The Committee is particularly concerned at the emergence of a trend which consists of tending to consider the payment of workers' wages as an option rather than an obligation, or as a duty which is only to be honoured if and when other conditions so permit. The practices of barter and payment in kind often amplify this distortion of the concept of labour remuneration by seeming to imply that, where workers are denied their contractually agreed dues, they should content themselves with whatever form and means of payment is available.

**412.** Under the circumstances, the Committee thinks it essential to reaffirm the fundamental nature of wages as being very similar to maintenance allowances, with all the specific guarantees that flow from such a principle. None of the reasons normally advanced by way of excuse, such as the implementation of structural adjustments or "rationalization" plans, falling profit margins or the weakness of the economic situation, can be accepted as valid pretexts for the failure to ensure the timely and full payment to workers of the wages due for work already performed or services already rendered, in accordance with the requirements of Article 12 of the Convention. The financial straits of a private enterprise or a public administration may be addressed in many ways, but not the deferred payment or non-payment of the outstanding wages due to workers. Based on the lessons drawn from recent experiences, the Committee recalls that the deferred payment of wages is a particularly resistant problem that requires close supervision, particularly through the reinforcement of inspection services; the imposition of effective and truly dissuasive sanctions; reasonable compensation for the loss incurred by workers whose wages have not

been paid; continuous social dialogue; a wide range of targeted legislative and other measures; and above all a strong political commitment to break the vicious spiral of rising wage arrears, demonetized transactions and deteriorating living standards.

**413.** As regards the requirements of the Convention with respect to the place and time of the payment of wages, the Committee notes that these appear to be globally accepted and applied without any particular difficulty. Moreover, the safeguards laid down in the Convention prohibiting the payment of wages in taverns, places of amusement and also, under certain conditions, in shops or stores, would appear somewhat less relevant today in most of the more developed countries, especially in view of the increasing use of non-cash methods of payment, such as direct bank transfers. But these provisions are undoubtedly still relevant in the context of other countries, notably with regard to labour remuneration practices concerning agricultural workers.

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## CHAPTER VII

### DUTY TO PROVIDE INFORMATION ON WAGES

**414.** As already noted in the introduction to this survey, the provision of information is one of the five main objects around which the instruments under consideration are articulated. The Convention contains substantive rules designed to ensure that workers enter and pursue employment in full awareness of the wage conditions applicable to them. Article 14 calls for effective measures to be taken, where necessary, to inform workers of the conditions and particulars of their wages, while Article 15(d) requires the maintenance of adequate wage records in all appropriate cases. In addition, Paragraphs 6 and 7 of the Recommendation specify the details of the wage conditions which should be brought to the knowledge of the workers, such as the rates of wages payable, the method of calculation and the pay intervals, as well as the details concerning the calculation of their earnings in respect of each pay period.

#### **1. Notification of wage conditions to workers before entering employment**

**415.** Under the terms of Article 14(a) of the Convention, effective measures must be taken, where necessary, to ensure that workers are informed in an appropriate and easily understandable manner before they enter employment and when any changes take place, of the conditions in respect of wages under which they are employed. This provision is supplemented by Paragraph 6 of the Recommendation, which enumerates the details of the wage conditions to be brought to the knowledge of the workers and which should include, wherever appropriate, particulars concerning: (a) the rates of wages payable; (b) the method of calculation; (c) the periodicity of wage payments; (d) the place of payment; and (e) the conditions under which deductions may be made.<sup>1</sup>

<sup>1</sup> The text originally proposed by the Office required “all practicable measures to be taken to ensure that workers are informed, in a manner approved by the competent authority, of the conditions in respect of wages under which they are employed”. This provision was modified at the first Conference discussion to make it clear that workers should be informed of their wage conditions at the time of their engagement, and thereafter when changes occurred, and that this information should be given to them in an easily understandable manner. Another amendment was

**416.** In this regard, the Committee considers that two points call for some initial comments. First, the expression “before they enter employment” may require some clarification since, if taken literally, it would appear to require that in all cases wage particulars be communicated to the worker concerned before the employment relationship is established. As the preparatory work reveals, this expression was used to make it clear that workers should be informed of their wage conditions “at the time of their engagement”, but not necessarily before the beginning of the period of employment.<sup>2</sup> Bearing in mind that the intention of the drafters of the Convention was to ensure that workers receive essential information in respect of their wages at the time of their engagement, it would appear that the information in question might be given before or upon the commencement of employment. Although in some countries, as explained below, notification of wage conditions to workers is expressly required before the formal conclusion of an employment contract or before the performance of the contract is commenced, the requirement of information set out in Article 14(a) of the Convention might not apply strictly to the period prior to the establishment of the employment relationship, but could also cover a fairly short period of time after the commencement of employment.

**417.** The second point relates to the nature of the obligations for ratifying States arising out of this Article of the Convention. In this regard, it should be noted that the words “where necessary” were inserted at the beginning of Article 14 before the second Conference discussion on the grounds that action would otherwise appear to be required by the competent authority even where the substantive requirements were observed in practice.<sup>3</sup> As finally worded, therefore, Article 14 is clearly a permissive provision, leaving it to the competent authorities to determine whether existing measures are effective and whether any further measures are necessary.

### **1.1. Wage particulars to be specified in employment contracts**

**418.** National laws contain a wealth of provisions concerning the requirement to inform workers of the wage conditions under which they are employed. In some cases, express provision is made for such details to be provided before the signature of a contract of employment, or before newly recruited workers take up their duties. For instance, in the *Czech Republic*<sup>4</sup> and

also accepted for the replacement of the opening words “all practicable” by the word “effective”; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 463.

<sup>2</sup> See ILC, 32nd Session, 1949, Report VII(1), p. 12.

<sup>3</sup> See ILC, 32nd Session, 1949, Report VII(2), p. 20.

<sup>4</sup> (1), s. 28; (2), s. 18(2). Similarly, in Croatia (1), s. 5(2), before employees commence work, employers are bound to help them familiarize themselves with the employment rules and

*Slovakia*,<sup>5</sup> prior to entering into an employment contract, employers are obliged to acquaint employees with the rights they will acquire and the obligations they will assume under the employment contract and with the working and wage conditions under which they are to perform their work. Moreover, employers are bound to notify employees in advance of any changes in the mode of remuneration, the wage level, or the conditions under which they are granted. In *Zambia*,<sup>6</sup> an employer must, before an employee commences employment or when changes in the nature of such employment take place, cause to be explained to such employee the rate of wages and conditions relating to such payment, while in the *Democratic Republic of the Congo*,<sup>7</sup> the employer is bound to give to the worker a copy of the draft contract and the essential documents to which it refers at least two working days before the signing of the contract. In *Malaysia*,<sup>8</sup> every employer must furnish to every employee on or before the date of the commencement of employment, and subsequently upon any change in the terms and conditions of employment affecting their wages, a certified copy of the particulars recorded in their register concerning the terms and conditions of employment, including wage rates, other allowances, rates for overtime work and other benefits. Similarly, in *Sri Lanka*,<sup>9</sup> every employer must furnish employees on the date of their employment detailed particulars relating to the conditions of employment, including information on basic remuneration, the scale of remuneration, pay intervals and any allowances. All such particulars must be given in writing in the language with which the employee is fully conversant, and the employee must acknowledge receipt on a duplicate to be retained by the employer.

**419.** In the large majority of cases, national laws and regulations require details concerning remuneration to be included in individual agreements or contracts of employment. In *Malta*,<sup>10</sup> when a contract of service is in writing it must contain, among others, such particulars as the normal and overtime wage

regulations and to inform them of the organization of work and safety measures. In *Slovenia* (1), s. 26(7), before concluding an employment contract, the employer must inform the candidate of the work, the working conditions and workers' and employers' rights and obligations related to the work for which the employment contract is to be concluded.

<sup>5</sup> (1), ss. 41(1), 54.

<sup>6</sup> (1), ss. 24(f), (g), 30(f), (g), 51.

<sup>7</sup> (1), s. 35; (3), s. 2(2).

<sup>8</sup> (3), s. 8(1). Similarly, in *Guyana* (1), s. 17(1), when employers offer any work to employees, they must inform them, either at the time of the offer or as soon thereafter on the same day as may be practicable, whether they are to be paid for their services by the task or by the day, and at what rate for the task or day, as the case may be.

<sup>9</sup> (1), s. 17; (4), s. 15(1), (2).

<sup>10</sup> (1), ss. 31(1), 32.

rates payable, the periodicity of wage payments, the leave entitlements and the conditions under which fines may be imposed. When the contract is not in writing, the employer must give or send within the first six days a signed statement showing the same particulars. Similarly, in *Uganda*,<sup>11</sup> in every written contract there must be an indication of the wage rates, the method of calculation, the periodicity of payment, advances of wages and the manner of repayment of any such advances, whereas a worker employed under a contract that is not in writing must be provided with an employment card in which there should be mention of the rate of payment and of any benefits in kind, such as food. In the *Republic of Moldova*<sup>12</sup> and *Ukraine*,<sup>13</sup> the law provides that, upon the conclusion of a labour contract, the employer has the obligation to inform the workers of such conditions as wage rates, the form of remuneration, the method of calculation, pay intervals, the place of payment and deductions. It is also stipulated that workers must be notified of any change in the wage system and amount of wages not less than two months in advance. In addition, five days after recruitment, the employing unit has to deliver to all salaried employees wage books indicating the working conditions and the method of calculation of wages. In Japan<sup>14</sup> and the Republic of Korea,<sup>15</sup> the legislation stipulates that in concluding a labour contract, an employer must clearly state the wages, working hours and other terms of employment to the worker, including such particulars as the form of remuneration, the method of calculation and the dates for closing account for wages and for payment of wages.

<sup>11</sup> (1), ss. 9(1), 11(e); (2), ss. 21, 22(e).

<sup>12</sup> (1), ss. 29, 106; (2), s. 19(2). Similarly, in *Azerbaijan* (1), ss. 43(2)(g), 56(2) and *Kyrgyzstan* (1), ss. 92(2), 108, 225(1), employers must notify their employees in writing of the introduction of new or the modification of existing terms of wages at least one month in advance. Labour contracts must contain information on the amount and forms of remuneration, as well as on the place and time of payment. See also *Belarus* (1), ss. 19, 32, 373; *Estonia* (1), s. 26; (2), ss. 3(2), 4(1), 10(1); *Lithuania* (1), ss. 8, 22; (2), s. 3; *Tajikistan* (1), s. 5(2).

<sup>13</sup> (2), s. 29.

<sup>14</sup> (2), s. 15(1); (3), s. 5.

<sup>15</sup> (1), s. 24.

**420.** Furthermore, in *Bulgaria*,<sup>16</sup> *Poland*,<sup>17</sup> *Venezuela*<sup>18</sup> and *Yemen*,<sup>19</sup> an employment contract must designate the place, the nature of work and the terms of payment of the labour remuneration of the worker, while in *Bahrain*,<sup>20</sup> *Niger*,<sup>21</sup> and *Senegal*,<sup>22</sup> contracts must be concluded in writing and indicate, among other information, the amount of wages agreed, the method and time of payment, and all wage components received in cash or in kind. In *Seychelles*,<sup>23</sup> a contract of employment, whether for continuous employment, fixed-term or part-time work, must specify as accurately as possible, among other data, the nature and place of employment, the remuneration or wages to be paid and the periods of payment and any other benefits the worker is to receive, while in the case of workers who are not literate, the contract has to be read, explained and attested, on behalf of the worker, by a witness whose signature, full name and address must appear on the contract. In *Egypt*,<sup>24</sup> a labour contract must be in writing and must include, among other indications, the agreed wage and the manner and date of its payment, along with all monetary and advantages in kind agreed upon, while in *China*,<sup>25</sup> *Kuwait*<sup>26</sup> and *Viet Nam*,<sup>27</sup> the law merely states

<sup>16</sup> (1), s. 66(1). Similarly, in *Colombia* (1), ss. 38, 39, an employment contract must contain information about the amount and form of the remuneration and the intervals of payment at which the remuneration is paid. In *Guatemala* (2), ss. 27, 29, and *Nicaragua* (2), ss. 20(f), 24, in respect of oral contracts, which are mainly concluded with agricultural, domestic and casual workers, the employer must provide within the first three days from the commencement of employment a written statement or other written evidence including information about the agreed remuneration. In *Slovenia* (1), s. 29(1), the employment contract must specify, among other conditions, the amount of basic salary, other salary components, the pay period, the pay day and the manner of payment. See also *Cuba* (1), ss. 28, 37(e), 115; *Dominican Republic* (1), ss. 19, 20, 24(3); *Honduras* (2), ss. 37(h), 39; *Russian Federation* (1), s. 57.

<sup>17</sup> (1), ss. 29(1), (3), 42. If the contract has not been concluded in writing, the employer must confirm in writing not later than seven days following the commencement of work the nature and conditions of the contract.

<sup>18</sup> (1), s. 71(f).

<sup>19</sup> (1), s. 30(2).

<sup>20</sup> (1), s. 39. See also *Cape Verde* (1), s. 9(2); *Congo* (2), s. 32-3; *Democratic Republic of the Congo* (1), s. 187; *Guinea-Bissau* (1), s. 7; *Libyan Arab Jamahiriya* (1), s. 23.

<sup>21</sup> (1), s. 26; (2), s. 4.

<sup>22</sup> (3), s. 3.

<sup>23</sup> (1), s. 21(1)(c), (3). Similarly, in *Ghana* (1), s. 31(1), every contract must contain in clear and unambiguous terms such particulars as the nature and duration of employment, the rate of remuneration and the method of calculation, as well as the manner and time of payment of the remuneration.

<sup>24</sup> (1), s. 30(d).

<sup>25</sup> (2), s. 19.

<sup>26</sup> (1), s. 12. See also *Oman* (1), s. 28.

<sup>27</sup> (1), s. 29(1); (2), s. 2.

that the amount of the salary or wages is among the main provisions to be contained in a labour contract.

**421.** In addition, in Indonesia,<sup>28</sup> a labour agreement made in writing must indicate the amount of the wage and the method of payment, which should not contradict the company rules, the collective labour agreement and any laws in force. In *Botswana*,<sup>29</sup> the law requires employers to issue and sign in duplicate an employment card indicating the date of commencement of employment, the ordinary and overtime wage rate, the pay interval, the usual hours of work and the number of days of paid leave per year, and they have to deliver the employment card to the employee for safe keeping. In the United States,<sup>30</sup> many state labour laws specifically require that the employer notify the employees at the time of hiring of the rate of pay, possible deductions and the day and place of payment. In addition, the employer must notify the employees of any changes on the pay day prior to the time of such changes. In Canada,<sup>31</sup> few jurisdictions have legislated requirements for employers to provide information on working conditions to workers at the time of or before entering employment. The Government has reported, however, that all Canadian provinces, excluding the territories, offer toll-free telephone information on labour standards, and have web sites that provide information on labour standards, such as working conditions and wage deductions. In addition, other means of communication, such as workshops, seminars, brochures, fact sheets, public libraries and the distribution of the labour legislation to social partners, are used in various jurisdictions.

**422.** With regard to the matters dealt with in this Article of the Convention, the legislation of practically all European countries reflects the provisions of European Council Directive 91/533/EEC, adopted on 14 October 1991, on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. Under the terms of the

<sup>28</sup> (1), s. 14(1).

<sup>29</sup> (1), s. 32(1), (2); (4), s. 3. See also Morocco (1), s. 9.

<sup>30</sup> See, for instance, Alaska (5), s. 23.05.160; Connecticut (11), s. 31-71f; Delaware (13), s. 1108; Hawaii (16), s. 388-7; Idaho (17), s. 45-610(2); Illinois (18), s. 115/10; Iowa (20), s. 91A.6(1); Maryland (26), s. 3-504; Minnesota (29), s. 181.55; New Hampshire (36), s. 275.49; New Jersey (37), s. 34:11-4.6; New York (39), s. 195(1), (2); North Carolina (40), s. 95-25.13 and (41), ss. 13-12.0803, 13-12.0804, 13-12.0805; Pennsylvania (46), s. 231.22(c); South Carolina (48), s. 41-10-30(A); Utah (52), s. 34-28-4(1); West Virginia (57), s. 21-5-9. In some cases, state laws provide for the notification of wages conditions but only on written demand; see Montana (33), s. 39-3-203.

<sup>31</sup> See, for instance, Newfoundland and Labrador (9), s. 2.1(1). In Alberta (4), s. 13(1), the law stipulates that an employer must give each employee notice of a reduction of the employee's wage rate, overtime rate, vacation pay, general holiday pay or termination pay before the start of the employee's pay period in which the reduction is to take effect.

Directive, which is “designed to provide employees with improved protection against possible infringements of their rights and to create greater transparency on the labour market”, an employer is obliged to notify an employee within two months after the commencement of employment of the essential aspects of the contract or employment relationship, including at least: (i) the identities of the parties; (ii) the place of work; (iii) the title, grade, nature or category of the work, or alternatively a brief job description; (iv) the date of commencement; (v) the amount of paid leave; (vi) the length of the periods of notice to be observed by the parties; (vii) the initial basic amount, the other component elements and the frequency of payment; (viii) the length of the employee’s normal working day or week. The required information may be provided in the form of a written contract of employment, or a letter of appointment, or one or more other written documents. The Directive further specifies that any change to the details referred to above must be the subject of a written document to be provided by the employer to the employee not later than one month after the date of entry into effect of the change in question.<sup>32</sup>

**423.** Most European countries have enacted specific laws and regulations transposing the principles of the Directive into national legislation. For instance, in *Italy*<sup>33</sup> and the *Netherlands*,<sup>34</sup> the employer is obliged to provide the employee within one month of the commencement of employment with a written statement indicating, among other information, the wage rate and pay intervals. Where the employee is to work outside the country, information should also be given on the currency to be used for payment. Moreover, any changes must be notified to the employee in writing within a month of the changes taking effect. Similarly, in *Cyprus*<sup>35</sup> and *Greece*,<sup>36</sup> every employer is obliged to inform the employee of the essential elements of the employment contract, including all elements of remuneration to which the employee is entitled and the frequency of

<sup>32</sup> The European Court of Justice had the opportunity to interpret the scope of the Directive in its Judgment of 4 December 1997 in Joined Cases C-253/96 to C-258/96. It held that the objective of the Directive would not be achieved if the employee were unable in any way to use the information contained in the notification as evidence before the national courts, and that the national courts must therefore apply and interpret their national rules on the burden of proof in the light of the purpose of the Directive, giving the notification such evidential weight as to allow it to serve as factual proof of the essential aspects of the contract of employment, and enjoying such presumption as to its correctness as would attach, in domestic law, to any similar document drawn up by the employer and communicated to the employee. For more on this Directive, see Catherine Barnard, *EC Employment Law*, 2000, pp. 436-440 and Pierre Rodière, *Droit social de l’Union européenne*, 2002, pp. 440-448.

<sup>33</sup> (3), ss. 1(1), 2(1), 3.

<sup>34</sup> (2), s. 1; (1), s. 1637F. The situation is the same in Germany (2), ss. 2(1), 3.

<sup>35</sup> (1), ss. 3(2), 4(1), (2), 5, 6(1), (3).

<sup>36</sup> (2), ss. 1(3), 2(1), (2), 3.

payment. The information has to be provided in writing (in the form of a contract, letter of engagement or other document signed by the employer) and not later than one month in the case of *Cyprus* and two months in the case of *Greece* after the beginning of employment, except for workers whose employment relationship does not exceed one month. In *Spain*,<sup>37</sup> in the case of employment contracts of a duration longer than four weeks, the employer is bound to provide the worker with written information regarding the working conditions, including the initial wage amount, any wage supplements and the pay intervals.

**424.** In addition, in *Austria*,<sup>38</sup> the employer is required to deliver to the employee, immediately following the start of the employment relationship, a written description of the principal rights and obligations arising from the employment contract which must include information on the starting remuneration, and particularly the basic wage and other components of remuneration, such as special payments, and the due date of remuneration. The employee must also be notified of any changes immediately, or in any case no later than one month following their effective date. Similarly, in *Norway*,<sup>39</sup> all employment relationships must be covered by a written contract containing particulars such as the applicable pay scale or the pay agreed on commencement of the employment relationship, any supplements, and other remuneration, such as pension payments and meals or accommodation allowances, and the payment intervals. The information may take the form of references to the laws, regulations and collective agreements regulating these matters, and any changes in the employment relationship have to be indicated in the contract at the earliest opportunity and not later than one month after the date of entry into effect of the changes in question. In the United Kingdom,<sup>40</sup> under the terms of the Employment Rights Act, an employer is required to give to the employee not later than two months after the beginning of the employment a written statement of particulars of employment, including the scale of remuneration or the method

<sup>37</sup> (1), s. 8(5); (10), s. 2(2)(e).

<sup>38</sup> (5), s. 2.

<sup>39</sup> (1), ss. 55B, 55C(h), 55D, 73P. In the case of an employee being posted to another country within the EEA area, the employment agreement should also indicate the currency in which remuneration is to be paid and any cash benefits or benefits in kind associated with the work abroad. Similarly, in Croatia (1), s. 12(1), (2), among the mandatory contents of a written contract of employment are the basic salary, salary supplements and pay intervals, or alternatively, a reference to the special laws or regulations, collective agreements or employment rules regulating these issues.

<sup>40</sup> (1), ss. 1(2), (4), 2(6), 4(3). Similar provisions are found in the laws of non-metropolitan territories, such as the Falkland Islands (9), s. 4(3), Gibraltar (11), s. 21(1), Guernsey (12), s. 1(3), Isle of Man (14), s. 1(3), and Jersey (19), s. 2(2). The time limit for the provision of the written statement varies in these territories from six days to 13 weeks.



of calculating remuneration and the pay intervals, whereas in the case of any change a further statement must be given at the earliest opportunity and, in any event, not later than one month after the change in question.

**7.1. Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship**

*Article 2*

Obligation to provide information

1. An employer shall be obliged to notify an employee to whom this Directive applies, hereinafter referred to as "the employee", of the essential aspects of the contract or employment relationship.

2. The information referred to in paragraph 1 shall cover at least the following:

- (a) the identities of the parties;
- (b) the place of work; where there is not fixed or main place of work, the principle that the employee is employed at various places and the registered place of business or, where appropriate, the domicile of the employer;
- (c) (i) the title, grade, nature or category of the work for which the employee is employed; or  
(ii) a brief specification or description of the work;
- (d) the date of commencement of the contract or employment relationship;
- (e) in the case of a temporary contract or employment relationship, the expected duration thereof;
- (f) the amount of paid leave to which the employee is entitled or, where this cannot be indicated when the information is given, the procedures for allocating and determining such leave;
- (g) the length of the periods of notice to be observed by the employer and the employee should their contract or employment relationship be terminated or, where this cannot be indicated when the information is given, the method for determining such periods of notice;
- (h) the initial basic amount, the other component elements and the frequency of payment of the remuneration to which the employee is entitled;
- (i) the length of the employee's normal working day or week;
- (j) where appropriate:
  - (i) the collective agreements governing the employee's conditions of work; or
  - (ii) in the case of collective agreements concluded outside the business by special joint bodies or institutions, the name of the competent body or joint institution within which the agreements were concluded. [...]

(continued...)

(concluded...)

*Article 3*  
Means of information

1. The information referred to in Article 2(2) may be given to the employee, not later than two months after the commencement of employment, in the form of:

- (a) a written contract of employment; and/or
- (b) a letter of engagement; and/or
- (c) one or more other written documents, where one of these documents contains at least all the information referred to in Article 2(2)(a), (b), (c), (d), (h) and (i). [...].

*Article 5*  
Defence of rights

1. Member States shall introduce into their national legal systems such measures as are necessary to enable all employees who consider themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process after possible recourse to other competent authorities. [...]

*Article 8*  
Defence of rights

1. Member States shall introduce into their national legal systems such measures as are necessary to enable all employees who consider themselves wronged by failure to comply with the obligations arising from this Directive to pursue their claims by judicial process after possible recourse to other competent authorities. [...]

**425.** The period within which workers have to be informed of the wage conditions of their employment differs considerably from one country to another and may vary from a few days to a few weeks or months from the beginning of the employment. For instance, in *Nigeria*,<sup>41</sup> employers are required to provide their workers with written statements specifying the wage rates, method of calculation and the manner and periodicity of payment not later than three months after the commencement of employment, and in the case of any change in the terms of employment the worker must be informed of the nature of the change by written statement not later than one month after the change. However, the legislation also provides that no workers may be employed until they are brought before an authorized labour officer and the latter is satisfied that the recruited workers understand and agree to the terms upon which they are to be employed. In *Swaziland*,<sup>42</sup> for instance, employers must hand over to each employee within six weeks of the beginning of employment a duly completed

<sup>41</sup> (1), ss. 7(1)(f), (2)(a), 33(2)(a), (b).

<sup>42</sup> (1), s. 22(1).

form containing written particulars, such as the wage and method of calculation, pay intervals, normal hours of work, annual holiday entitlement, paid public holidays, payment during sickness, etc. In *Dominica*,<sup>43</sup> a labour contract has to be prepared in writing not later than 14 days after the date of commencement of employment and must set out, among other indications, the rate of pay or the method used for calculating the pay of the employee, the pay intervals, overtime pay rate, sick leave and annual leave entitlements and the pay that the worker is entitled to receive during such leave. In the case of *Brazil*,<sup>44</sup> the employer has to register all relevant information, including the rate of remuneration, the form of payment and an estimate of the amount received by way of tips, in the worker's employment book within 48 hours from the date of recruitment.

**426.** In certain countries, the legislation creates the obligation to indicate in labour contracts some but not all the details of the wage conditions mentioned in Paragraph 6 of the Recommendation. For instance, in *Côte d'Ivoire*<sup>45</sup> and *Madagascar*,<sup>46</sup> a labour contract or a letter of appointment must indicate, among other details, the hierarchical position of the worker, the wage and wage supplements, but no reference is made to the periodicity of payments, place of payment, method of calculation or the conditions and limits of possible deductions. Similarly, in *Mexico*,<sup>47</sup> *Panama*<sup>48</sup> and *Paraguay*,<sup>49</sup> the law requires only the form and amount of wages to appear in a written contract of employment. In the *Islamic Republic of Iran*<sup>50</sup> and *Iraq*,<sup>51</sup> the legislation provides in general terms that an employment contract should contain information on the basic wage or salary and any supplements thereto. In *Hungary*,<sup>52</sup> the work contract must specify the employee's basic wages, official duties and place of work, while in *Sudan*,<sup>53</sup> a contract of employment must include such particulars such as the wage rate agreed upon and the dates of payment.

<sup>43</sup> (2), ss. 3, 5(1).

<sup>44</sup> (2), s. 29.

<sup>45</sup> (3), ss. 2, 3.

<sup>46</sup> (1), s. 17.

<sup>47</sup> (2), ss. 24, 25(vi). See also Chile (1), s. 10(4); El Salvador (2), s. 23(8), (9).

<sup>48</sup> (1), ss. 67, 68(7).

<sup>49</sup> (1), s. 233.

<sup>50</sup> (1), s. 10.

<sup>51</sup> (1), s. 30.

<sup>52</sup> (1), ss. 76(3), 82(3).

<sup>53</sup> (1), s. 30(d).

**427.** In other countries, such as *Benin*,<sup>54</sup> *Cameroon*,<sup>55</sup> *Mali*<sup>56</sup> and *Mauritania*,<sup>57</sup> the notification of wage conditions is required only in respect of specific categories of workers, including domestic workers and workers transferred to a place other than their usual place of residence, and specific types of contract, such as apprenticeship contracts or contracts for a period in excess of three months. In *Algeria*,<sup>58</sup> specific legislative guarantees respecting the notification to workers of their wage conditions also apply in respect of part-time workers and homeworkers.

**428.** In some countries, such as *Ecuador*<sup>59</sup> and *Tunisia*,<sup>60</sup> the general labour legislation does not require any particular wage details to be included in the employment contract, but implies that there should be prior agreement on any remuneration clauses. The same applies in the case of any modifications to the terms of the contract. For instance, in *Burkina Faso*,<sup>61</sup> *Guinea*,<sup>62</sup> *Niger*<sup>63</sup> and *Senegal*,<sup>64</sup> any substantial modification of the conditions set out in a contract of employment must be notified in writing and accepted by the worker in advance.

**429.** Finally, in some countries such as *Jordan* and *Uruguay*, no legislative provisions appear to exist to ensure that workers are clearly and fully informed before recruitment, or when any changes take place, of such wage particulars as wage rates, pay intervals, place of payment, method of wage calculation or the grounds on which deductions may be made.

## 1.2. Wage details regulated in works rules

**430.** In a number of countries, workers are informed of wage conditions under which they are employed by means of works regulations, which are often established in agreement with the trade union at the enterprise level and are

<sup>54</sup> (1), s. 65.

<sup>55</sup> (1), s. 27(1); (4), s. 2(2).

<sup>56</sup> (1), s. L.27; (2), s. D.86-6.

<sup>57</sup> (1), s. 42.

<sup>58</sup> (3), s. 8; (4), s. 5.

<sup>59</sup> (2), s. 12.

<sup>60</sup> (1), s. 134.

<sup>61</sup> (1), ss. 18, 20.

<sup>62</sup> (1), s. 68.

<sup>63</sup> (1), s. 62.

<sup>64</sup> (1), s. L.67.

displayed at the workplace. For example, in *Guatemala*,<sup>65</sup> *Honduras*<sup>66</sup> and *Poland*,<sup>67</sup> workplace regulations must specify, among other indications, the date, place and time of payment of remuneration, and the employer is obliged to ensure that each employee is familiar with the content of such regulations prior to the commencement of work. In *Norway*,<sup>68</sup> staff rules, including rules relating to the payment of wages, are obligatory for all industrial, commercial and office establishments employing more than ten persons and have to be posted at one or more conspicuous places in the establishment and be distributed to each employee. Similarly, in *Thailand*,<sup>69</sup> an employer who employs ten or more persons has to provide work rules which should indicate, among other details, the day and place of wage payment, and which should be distributed and posted in a prominent position in the workplace so that they can be conveniently read by employees. This is also the case in *Chad*,<sup>70</sup> *Democratic Republic of the Congo*,<sup>71</sup> *Libyan Arab Jamahiriya*<sup>72</sup> and *Mali*,<sup>73</sup> where works regulations, which are compulsory for any industrial, commercial and agricultural enterprise employing more than ten persons, have to contain rules on the arrangement for the payment of wages and be posted at an appropriate and easily accessible place so that they can be consulted at all moments.

**431.** In addition, in *Croatia*,<sup>74</sup> any employer employing more than 20 persons has to issue and publish employment rules regulating matters related to the payment of wages, work organization and other issues of importance to the employee, except where such issues are regulated by a collective agreement. The employer also has to ensure that the employment rules, together with any relevant collective agreement, are made available to employees in an appropriate

<sup>65</sup> (2), s. 60(d). This is also the case in *Costa Rica* (1), s. 68(c); *Dominican Republic* (1), s. 131(8); *Panama* (1), s. 185(3).

<sup>66</sup> (2), s. 92(8).

<sup>67</sup> (1), ss. 104-1(1), 104-2(1), 104-3(2).

<sup>68</sup> (1), ss. 69, 70(3). In *Austria* (7), s. 22(e), 23(1); (6), s. 4(4), employment rules must be issued in every enterprise with over 20 employees and have to indicate, among other information, the dates when wages are calculated and paid, and must be posted up in the enterprise in a conspicuous place accessible to all employees. In *Suriname* (1), s. 1613J(1), the employment rules are binding provided that a copy of the full text is kept posted in a place conveniently accessible in such a manner as to be easily read.

<sup>69</sup> (1), ss. 108, 110. See also *Japan* (2), s. 89; (5), ss. 97, 103, and the *Republic of Korea* (1), s. 96.

<sup>70</sup> (1), ss. 81, 85. See also *Yemen* (1), s. 89(f).

<sup>71</sup> (1), s. 136; (4), s. 6.

<sup>72</sup> (1), s. 76.

<sup>73</sup> (1), ss. L.64, L.67.

<sup>74</sup> (1), ss. 5(3), 123(1).

manner. In Indonesia,<sup>75</sup> company regulations, to be drawn up by the employer, except where a collective labour agreement is already in place, must contain provisions on the rights and obligations of the employer and of workers, and the employer is obliged to bring such regulations to the notice of the workers and to provide them with all relevant explanations.

**432.** In contrast, in certain countries, such as *Cameroon*,<sup>76</sup> *Côte d'Ivoire*<sup>77</sup> and *Senegal*,<sup>78</sup> the legislation expressly provides that internal regulations must refer exclusively to the technical organization of work, disciplinary standards and safety and hygiene, and that any other regulations, particularly those respecting remuneration, are to be deemed to be null and void.

### 1.3. Posting of applicable rules and notices at the workplace

**433.** In other countries, employers are required to post notices at the workplace containing extracts of applicable laws or regulations relating, for instance, to wage rates or the periodicity of payment. For example, in *Barbados*,<sup>79</sup> *Guyana*,<sup>80</sup> *Sri Lanka*,<sup>81</sup> *United Republic of Tanzania*<sup>82</sup> and *Zambia*,<sup>83</sup> every employer is under the obligation to post notices as may be prescribed for the purpose of informing workers of wage regulation orders affecting them. Similarly, in the *Central African Republic*,<sup>84</sup> *Djibouti*,<sup>85</sup> *Guinea*<sup>86</sup> and *Togo*,<sup>87</sup> the minimum wage rates and rates of remuneration for piece-work have to be posted in the employees' offices and the places where

<sup>75</sup> (1), ss. 39(1), 41(1), 42(1), 45.

<sup>76</sup> (1), s. 29(2); (3), ss. 1(1), 6(1). This is also the case in *Benin* (1), s. 137; *Burkina Faso* (1), s. 78; *Comoros* (1), s. 41; *Congo* (1), s. 75; *Niger* (1), s. 57; *Togo* (1), s. 31. In *Guinea* (1), ss. 120, 121, 122, 127, any enterprise normally employing at least 25 employees is required to draw up internal rules governing matters of discipline, health and safety in the establishment, with the exception of provisions regarding the mobility or loss of employment, or clauses which would tend to impede or limit the workers' rights under laws and regulations in force.

<sup>77</sup> (1), s. 15.1.

<sup>78</sup> (1), s. L.100.

<sup>79</sup> (4), s. 16(2).

<sup>80</sup> (1), s. 29(1); (4), s. 15(2).

<sup>81</sup> (2), s. 42; (5), s. 25; (1), s. 18(c).

<sup>82</sup> (3), s. 17(2).

<sup>83</sup> (1), s. 52.

<sup>84</sup> (1), s. 102.

<sup>85</sup> (1), s. 97.

<sup>86</sup> (1), s. 211.

<sup>87</sup> (1), s. 93.

workers are paid. In *Malta*,<sup>88</sup> a copy of every wage regulation must be exhibited by the employer in a conspicuous position at the workplace (whether it is a factory, workshop, office, club, hotel, shop, place of entertainment or garage), and on engagement of any employee, the employer must explain the provisions of any recognized conditions of employment that are applicable. In *India*,<sup>89</sup> the person responsible for the payment of wages to workers employed in a factory or an industrial or other establishment has to display a notice containing abstracts of the Payment of Wages Act in English and in the language of the majority of the employees. In *Japan*<sup>90</sup> and the Republic of *Korea*,<sup>91</sup> the legislation requires employers to keep workers informed of the main points of the Labour Standards Act by displaying or posting them at all times in a conspicuous location in the workplace and the dormitories.

**434.** Furthermore, in *Malaysia*,<sup>92</sup> when a collective agreement is in force and applicable to an employee, the employer is under an obligation to furnish the employee with a copy or display permanently at a conspicuous place accessible to the employee in the place of employment a copy of the collective agreement. Similarly, in the Australian state of *Tasmania*,<sup>93</sup> employers must ensure that a copy of an industrial award or registered agreement applicable to their employees is readily available for inspection and perusal by those employees and is displayed in a conspicuous place in the premises in which the employees are employed so as to be easily accessible. The same applies in *South Australia*,<sup>94</sup> where employers are required to exhibit a copy of an industrial award or enterprise agreement at a place that is reasonably accessible to the employees bound by such an award or agreement and to provide a copy to any employee who so requests.

<sup>88</sup> (1), s. 15(1), (2). This is also the case in *United Kingdom: Gibraltar* (11), s. 16.

<sup>89</sup> (1), s. 25.

<sup>90</sup> (2), s. 106.

<sup>91</sup> (1), s. 13.

<sup>92</sup> (3), s. 8(2). Similarly, in *Hungary* (1), s. 38(2), (3), employers have to provide assistance in acquainting employees with the terms of a collective agreement applicable to them, and also to provide copies of this agreement to the members of the factory committee and the trade union's workplace representatives.

<sup>93</sup> (9), s. 84.

<sup>94</sup> (8), s. 103(1), (4). Similarly, in *Western Australia* (12), s. 25, employers must ensure that employees are provided with a copy of a workplace agreement as soon as practicable after it is entered into, and there is a general requirement for employers to post a copy of the industrial award or workplace agreement in a place that can be conveniently accessed by employees.

**435.** In the United States,<sup>95</sup> federal legislation requires employers to post and keep posted in conspicuous places in every establishment a notice containing information on the minimum wage rates applicable to employees, while similar posting requirements are to be found in most state wage payment laws and regulations with respect to minimum wages, regular pay days and the time and place of payment or any relevant changes that may occur from time to time. The notice may be posted at the worksite if practicable, or otherwise where it can be seen as employees come and go to the workplace, or at the office or nearest agency for payment kept by the employer. In some cases, employers are to be furnished copies of applicable wage payment laws and regulations on request without charge for posting purposes. In Canada,<sup>96</sup> under federal legislation, every employer has to post notices containing information relating to the payment of wages while half of Canada's jurisdictions require that all employers post in a prominent and visible place in the work establishment a copy of their respective standards legislation.

## **2. Provision of itemized wage statements**

**436.** Under the terms of Article 14(b) of the Convention, effective measures must be taken, where necessary, to ensure that workers are informed in an appropriate and easily understandable manner 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. Paragraph 7 of the Recommendation offers further guidance in this regard and indicates that, in all appropriate cases, workers should be informed, with each payment of wages, of the following particulars relating to the pay period concerned: (a) the gross amount of wages

<sup>95</sup> (2), s. 516.4. See also Alaska (5), s. 23.05.160; Arkansas (8), s. 11-4-216; California (9), s. 207; Colorado (10), s. 8-4-107; Connecticut (11), s. 31-71f; Delaware (13), s. 1108; Georgia (15), s. 34-4-5; Hawaii (16), s. 388-7; Illinois (18), s. 115/10; Kansas (21), s. 44-320; Kentucky (22), s. 337.325; Louisiana (24), s. 15; Maine (25), s. 668; Michigan (28), s. 408.391; Missouri (32), s. 290.522; Montana (33), s. 39-3-203; Nebraska (34), s. 48-1205; Nevada (35), s. 608.080(1); New Hampshire (36), s. 275.49; New Jersey (37), s. 34:11-4.6; North Carolina (40), s. 95-25.13 and (41), s. 13-12.0806; Ohio (43), s. 4111.09; Pennsylvania (46), s. 231.37; Rhode Island (47), s. 28-12-11; South Carolina (48), s. 41-1-10; Tennessee (50), s. 50-2-103(d); Utah (52), s. 34-28-4(1); Vermont (53), s. 393; Washington (56), s. 296-126-080; West Virginia (57), s. 21-5-9.

<sup>96</sup> (2), s. 25(2). See also New Brunswick (8), s. 11(2); Newfoundland and Labrador (9), s. 2.2; Northwest Territories (11), s. 4; Nova Scotia (12), ss. 45, 54; Prince Edward Island (15), ss. 5(4), 34; Saskatchewan (17), s. 69(1).



earned; (b) any deduction made, including the reason and the amount; and (c) the net amount of wages due.<sup>97</sup>

**437.** In most countries, the legislation provides not only that wages must be paid regularly, but also that at the time of each payment workers are to be provided with detailed information in writing indicating the overall amount of the wages due and specifying all wage components and any deductions eventually made. Greatly facilitated by developments in information technology, this practice is no longer limited to certain industries or sectors of economic activity, but is rapidly expanding to smaller enterprises, and even those employing a small number of workers. A review of national law and practice shows a clear tendency towards the generalization of the requirement to issue statements of earnings as a method of keeping workers fully and regularly informed of the reckoning of their earnings. As well as being important sources of information, wage statements also constitute evidence and as such are widely used in the judicial settlement of labour conflicts. The probative value of pay slips is not limited to the level and calculation of the wages due but also covers other indications, such as the classification of the worker's position or the amount of social security contributions. More generally, wage statements provide proof of the existence or adequacy of the financial resources that the worker often needs to provide in his relations with third persons, such as banks and real estate agents. In a number of countries, wage statements carry the presumption of the payment of the sums indicated and the burden of proof lies with the worker for the rebuttal of such presumption.

**438.** In several countries, national laws and regulations specify the wage details that employers are required to provide to employees in writing at the time of each payment of wages. In most cases, these laws reflect the particulars listed in Paragraph 7 of the Recommendation and provide that pay statements must contain information on: the total amount of wages earned, including supplements and allowances; any deductions made, including the reason and amount of such deductions; and the actual sum due to the employee. This is the case, for

<sup>97</sup> These provisions gave rise to no particular comments during the two Conference discussions and were adopted in practically the same form proposed by the Office; see ILC, 31st Session, 1948, *Record of Proceedings*, pp. 463, 466, and ILC, 32nd Session, 1949, *Record of Proceedings*, pp. 509, 514.

instance, in *Argentina*,<sup>98</sup> *Bahamas*,<sup>99</sup> *Mauritius*,<sup>100</sup> *Republic of Moldova*,<sup>101</sup> *Paraguay*,<sup>102</sup> *Russian Federation*,<sup>103</sup> *Spain*,<sup>104</sup> *Ukraine*,<sup>105</sup> *Uruguay*<sup>106</sup> and *Venezuela*.<sup>107</sup> In *Mozambique*,<sup>108</sup> at the time of payment, the employer must issue workers with a statement indicating their name, the net amount of wages payable, the dates of the pay period concerned, and the particulars of each wage calculation and any deductions made. In *Namibia*,<sup>109</sup> the particulars required to be indicated in the wage statement include the ordinary hourly, daily, weekly, fortnightly or monthly scale of remuneration of the employee, the pay period, the amount paid in respect of basic pay, overtime, night work, work on holidays and any allowances, the gross and net amount of remuneration payable, as well as details and the amount of any deductions.

**439.** In the United States,<sup>110</sup> most state labour laws provide for the issuance of earnings statements at the time of each pay of wages, either as a

<sup>98</sup> (1), ss. 138-140. This is also the case in *Chile* (1), s. 54; *Estonia* (2), s. 8(2); *Germany* (1), s. 134(2); *Luxembourg* (2), s. 40(1); *Morocco* (1), s. 10; *Rwanda* (4), s. 2; *Slovenia* (1), s. 135(3); *United Kingdom* (1), s. 8(2), and certain non-metropolitan territories such as the *Falkland Islands* (9), ss. 10, 11(1), *Guernsey* (12), s. 3A(2), and *Isle of Man* (14), s. 7.

<sup>99</sup> (4), s. 30(1); (1), s. 4. The Minister may, however, by order exempt any class of employer from any or all the requirements with regard to pay statements.

<sup>100</sup> (1), s. 49(2)(c)(ii); (2), s. 7. Only employers employing 15 or more workers are obliged to issue wage statements.

<sup>101</sup> (1), s. 102; (2), s. 19(3). In *Azerbaijan* (1), s. 173(2), payment documents must also indicate the parties' outstanding debts to one another and the amount.

<sup>102</sup> (1), s. 235.

<sup>103</sup> (1), s. 136.

<sup>104</sup> (1), s. 29(1); (6), s. 2 and Annex.

<sup>105</sup> (2), s. 30.

<sup>106</sup> (5), s. 2.

<sup>107</sup> (1), s. 133(5).

<sup>108</sup> (1), s. 53(4).

<sup>109</sup> (1), s. 36(3)(a); (3), Schedule. The legislation further provides that a wage statement must be handed over to the employee even when remuneration is paid by direct bank transfer.

<sup>110</sup> See, for instance, *California* (9), s. 226(a); *Colorado* (10), s. 8-4-105(4); *Delaware* (13), s. 1108; *Hawaii* (16), s. 388-7; *Idaho* (17), s. 45-609(2); *Illinois* (18), s. 115/10; *Maryland* (26), s. 3-504; *Michigan* (28), ss. 408.391 and 408.479(2); *Minnesota* (29), s. 181.032; *New Mexico* (38), s. 50-4-2(B); *New York* (39), s. 195(3); *South Carolina* (48), s. 41-10-30(C); *Texas* (51), s. 62.003; *Washington* (56), s. 296-126-040. In some states, the requirement for the issuance of a wage statement refers solely to the amount of wage deductions: *Kentucky* (22), s. 337.070; *Massachusetts* (27), s. 150A; *Missouri* (32), s. 290.080; *Montana* (33), s. 39-3-101; *Nevada* (35), s. 608.110(2); *New Hampshire* (36), s. 275.49; *New Jersey* (37), s. 34:11-4.6; *North Carolina* (40), s. 95-25.13 and (41), s. 13-12.0807; *Oregon* (45), s. 652.610(1), (2); *Rhode Island* (47), s. 28-14-2.1; *Utah* (52), s. 34-28-3(4); *West Virginia* (57), s. 21-5-9; *Wyoming* (59), s. 27-4-101(b). In *Iowa* (20), s. 91A.6(3), an itemized statement listing the earnings and deductions

detachable part of the cheque, draft or voucher paying the employee's wage or separately when wages are paid by personal cheque or cash, showing in particular the gross wages earned, the inclusive dates of the period for which payment is effected and all withholdings and deductions. In Canada,<sup>111</sup> at the federal level, an employer must, at the time of making any payment of wages to an employee, furnish the employee with a statement in writing setting out the period and the number of hours for which payment is made, the wage rate, details of the deductions made and the actual sum being received by the employee. Moreover, under the laws of nearly all Canadian jurisdictions, employers must provide written earnings statements at the end of the pay period, or on a pay day, showing the hours of work, the wage rate, the amount and purpose of deductions, the period covered by the statement and the gross and net pay.

**440.** In *Swaziland*<sup>112</sup> and *Tunisia*,<sup>113</sup> the wage slip must provide the employee with the following written details: name of the employee and occupation; the wage rate; the period to which the wage relates; the number of hours paid at the ordinary rate; the number of hours paid at the overtime rate; the nature and amount of any bonuses or allowances paid; the gross wages earned; the amount and reasons for any deductions; and the amount of the net wages paid. Similarly, in *Burkina Faso*,<sup>114</sup> *Madagascar*<sup>115</sup> and *Niger*,<sup>116</sup> the wage statement may take the form of a sheet, card, envelop or wage book, but it has to be personal and must be issued at the time of payment, even if the worker is

has to be furnished within ten working days of a request by an employee, while employers need honour only one such request in any calendar year unless the rate of earnings, hours or deductions are changed during the calendar year. Wage statements only upon the employee's prior request are also provided for in Kansas (21), s. 44-320; Nevada (35), s. 608.115(2); Virginia (54), s. 40.1-29(C).

<sup>111</sup> (1), s. 254(1). See also Alberta (4), s. 14(2); New Brunswick (8), s. 36(1); Newfoundland and Labrador (9), s. 35; Nova Scotia (13), s. 9(1); Quebec (16), s. 46. In some jurisdictions, a new statement is required only if a change occurs: British Columbia (6), s. 27(1), (4); Manitoba (7), s. 135(4), (5). In Ontario (14), s. 12(1), (3), the law permits the statement to be provided by electronic mail rather than in writing if the employee has access to a means of making a paper copy of the statement.

<sup>112</sup> (1), s. 61(1).

<sup>113</sup> (1), s. 143.

<sup>114</sup> (1), s. 114; (2), ss. 2, 3. See also *Côte d'Ivoire* (1), s. 32.5; (2), ss. 52, 53, 56; *Mali* (1), ss. L.104, L.105; (3), ss. A.109-2, A.109-3, A.109-5; *Mauritania* (1), s. 91; *Senegal* (2), ss. 1, 2, 3, 5. In *Algeria* (1), s. 86; (4), s. 6, the law requires regular pay slips to be prepared by the employer indicating the total amount of remuneration and the amount of all its components.

<sup>115</sup> (1), s. 74; (2), ss. 1, 2, 5. There is no obligation to issue a pay slip when the worker is engaged only for a few hours or by the day.

<sup>116</sup> (1), s. 163; (3), ss. 207, 208, 209.

engaged for only a few hours, or for a single day. The following indications have to appear in the wage statement: the type of work and professional classification of the worker; the wages in cash and in kind, especially if the worker receives housing and food; benefits and compensations; overtime; deductions; net amount of wages; and amount of employer's contributions. The same wage details are required under the laws of *Cameroon*,<sup>117</sup> *Democratic Republic of the Congo*<sup>118</sup> and *Gabon*.<sup>119</sup> In these countries, individual pay slips have to be delivered to workers after being duly certified by the employer or his representative and countersigned by the worker, irrespective of the nature and duration of the work or the amount of the remuneration. Similarly, in *India*,<sup>120</sup> a wage slip in the prescribed form must be issued by every employer to every person employed at least one day prior to the disbursement of wages, and all entries in such wage slips must be authenticated by the employer or any person authorized to do so. In *Brazil*<sup>121</sup> and *Peru*,<sup>122</sup> the pay slip is signed or finger-printed by the employee, while in *Cuba*, according to the information supplied by the Government, workers have to sign the wage statements issued at the time of each payment of wages. In the case of *Kyrgyzstan*<sup>123</sup> and *Viet Nam*,<sup>124</sup> shortly after recruitment, employees are issued with wage books in which records of their labour conditions and payments are to be entered.

**441.** The quantity of information contained in the pay slip has been increasing in recent years. This is due principally to the multiplicity of wage components, work schedules and pay rates, which necessitate complex calculations and often result in a highly technical document. Moreover, the different types of deductions and compulsory contributions add to the long list of accounting details which are regularly provided to workers with a view to enhancing protection and transparency, as well as increasing awareness of the social costs of employment. In *France*,<sup>125</sup> the law provides that at the time of payment all workers, irrespective of the amount or nature of their remuneration

<sup>117</sup> (1), s. 69(2); (2), ss. 1, 2, 3. Upon the employer's request, a labour inspector may accord an exemption from the obligation to issue a pay slip to workers engaged for only a few hours. See also *Benin* (1), s. 224; *Central African Republic* (1), s. 106; (2), s. 2; *Chad* (1), s. 263; *Congo* (1), s. 90; *Djibouti* (1), s. 101; *Togo* (1), s. 97.

<sup>118</sup> (1), s. 84; (2), s. 2.

<sup>119</sup> (1), s. 153.

<sup>120</sup> (3), s. 26(2), (3), (4).

<sup>121</sup> (2), s. 464.

<sup>122</sup> (5), s. 19.

<sup>123</sup> (1), s. 241(1), (2).

<sup>124</sup> (1), ss. 182, 183.

<sup>125</sup> (1), ss. L.143-3, L.620-7, R.143-2. Full indications of employer's contributions are also required in *Slovakia* (1), s. 130(5).

and the type or duration of their contract, must be issued with a wage statement indicating, among other information, the reference period, the work hours remunerated at the ordinary and overtime rates, the gross amount of wages, the amount of compulsory contributions deducted from that amount, other deductions made, the amount of any supplementary payments not taken into consideration for the calculation of contributions and the net wages paid to the worker. The wage statement also shows the amount of the social security contributions paid by the employer, while no reference may be made to the worker's participation in a strike. The employer is obliged to preserve copies of the wage statements for five years. However, under conditions and limits fixed by decree, which is to be adopted after consultations with the most representative employers' and workers' organizations, enterprises may be exempted from the obligation to file paper copies of wage statements, provided that they make use of other means, such as electronic storage, offering the same guarantees for control.

**442.** Furthermore, in *Belgium*,<sup>126</sup> the law stipulates that a wage statement must include the following elements: the pay period; the basic wage; any additional payments, such as compensation for overtime work or benefits in kind; social security deductions; the gross amount of wages; the taxable amount; the sums not subject to taxation; the taxes deducted in virtue of fiscal legislation; the net amount of wages paid; as well as detailed information on all other deductions (e.g. repayment of advances, fines, sums assigned or attached). In *Malaysia*,<sup>127</sup> every employer must furnish to every employee in a separate statement or card the particulars relating to details of wages and allowances earned during each wage period. Such particulars include the rate of pay, the total number of days of normal hours of work, the total number of hours of overtime work, the amount of wages paid in lieu of annual leave, details of other allowances, advances, deductions and holidays, or annual and sick leave with pay. The same particulars are recorded in the register which is kept by every employer for inspection purposes, which must be countersigned by the employee at the time of each payment.

<sup>126</sup> (1), s. 15; (2), s. 2. In the *Czech Republic* (1), s. 120(4); (2), s. 11(3); (4), s. 17(3) and *Hungary* (1), s. 160, employees must be provided with a detailed written account of their wages enabling them to check the correctness of the calculation, as well as the reasons and sum of the deductions effected. In *Italy* (4), s. 1(1), the pay statement must indicate the worker's name and position, the pay period and, in particular, all the items making up the remuneration, including family allowances and relevant mandatory deductions, while in *Norway* (1), s. 55(5), at the time of payment, the employee receives a written statement of the method used for calculating the pay, the basis on which holiday pay is calculated and any deductions made. See also *Finland* (1), Ch. 2, s. 16.

<sup>127</sup> (1), s. 62; (3), ss. 5(c), 9.

**443.** In addition, in Australia,<sup>128</sup> the Federal Workplace Relations Regulations require employers to provide a payslip within one day of the payment of wages. Payslips have to contain a wide range of information relating to the employee's salary, such as the date of payment, the pay period, wage rates, the gross and net amounts of the payment, any amount paid by way of an allowance, and the purpose of each amount deducted from the gross amount of the payment, or the name and number of the fund or account into which the amount of the deduction was paid. As regards state legislation, in New South Wales,<sup>129</sup> an employer must, when paying remuneration to an employee, supply the employee with such written particulars as the date of payment, the period to which the payment relates, the gross amount of remuneration (including overtime and other payments), the amount deducted for taxation purposes, the amount deducted as employee contributions for superannuation purposes, details of all other deductions and the net amount paid. Instead of supplying these written particulars, the employer may, however, make other arrangements for the notification of wage-related information, provided that such arrangements are approved by the Industrial Registrar, are in the interests of the employees concerned and meet their reasonable requirements for information about labour remuneration. In Tasmania,<sup>130</sup> awards and registered agreements generally contain provisions, mainly in the form of "payment of wages" clauses, dealing with wage statements and stipulating that on or prior to pay day the employer must indicate to each employee, in writing, the amount of wages to which he is entitled, the amount of deductions made therefrom, and the net amount being paid.

**444.** In some countries, the provisions respecting wage statements do not impose an automatic obligation upon the employer, but instead establish a right which may be exercised by the worker. In such cases, the law merely provides that, upon request, workers may obtain a copy of their accounts in any pay

<sup>128</sup> (1), s. 353A(2); (2), ss. 132A(1), 132B(1).

<sup>129</sup> (3), s. 123(1); (4), s. 7(1). Similarly, in Queensland (5), s. 370(1), (2), at the time of payment an employer must state how the payment is made up by providing a written statement to the employee. The statement, which may be included in the employee's pay envelope, must indicate the date of payment, the period covered by the payment, the number of hours at ordinary and overtime rates, the ordinary and overtime hourly rates, the gross and net wages paid, the details of any deductions and the amount of the contributions paid to a superannuation fund. In South Australia (6), s. 102(7), if an employee is paid on an hourly basis, or on a basis where the rate varies according to the time worked, the employer must provide the employee at the time of each payment with a written record showing the number of hours worked during the relevant period (distinguishing between ordinary time and overtime) and the rate of pay on which the payment is based.

<sup>130</sup> See, for instance, Building Trades Award, s. 69(b); Electrical Engineers Award, s. 24(e); Restaurant Keepers Award, s. 28(c); Shipbuilders Award, s. 27(b); Automotive Industries Award, Part III, s. 7(e).

period or may inspect the documents used as a basis for calculating their remuneration. This is the case, for instance, in *Barbados*,<sup>131</sup> *Dominica*<sup>132</sup> and *Poland*.<sup>133</sup> In *Costa Rica*<sup>134</sup> and *Mexico*,<sup>135</sup> the employer must, at the worker's specific request, issue a written statement every 15 to 30 days showing the number of days worked and the remuneration paid. In New Zealand,<sup>136</sup> every employer must, at the request of an employee or a person authorized to represent such an employee, provide that employee or the employee's representative immediately with access to or a copy of or an extract from any part or all of the wages and time record relating to the employment of the employee at any time in the preceding six years. Similarly, in *Sri Lanka*,<sup>137</sup> the employer has to communicate all particulars of the wages paid to a worker upon the latter's own request or upon the request of the trade union to which she/he belongs.

**445.** The situation is similar with respect to certain extra payments, such as commissions and profit shares. In Indonesia,<sup>138</sup> for instance, when the entire wage or a part of it is based on data which can be obtained only from the books of the employer, the worker is entitled to request such data and evidence from the employer. Similarly in *Greece*,<sup>139</sup> *Netherlands*,<sup>140</sup> *Spain*<sup>141</sup> and *Suriname*,<sup>142</sup> in the case that the wages consist wholly or partly of a profit-share, the employer is bound to provide adequate information on the enterprise's profits and losses and to produce, if necessary, the accounting books. In *Panama*,<sup>143</sup> where the wage is composed of commissions on sales or amounts collected, or both, the employer is bound to provide detailed information permitting the worker to verify the exactness of the calculation of the amount of wages due. Finally, in *Swaziland*,<sup>144</sup> employees who are entitled to a commission or share of the profits

<sup>131</sup> (1), s. 17(1). See also El Salvador (2), s. 138.

<sup>132</sup> (1), s. 17(1).

<sup>133</sup> (1), s. 85(5).

<sup>134</sup> (1), ss. 22, 24(f).

<sup>135</sup> (2), ss. 132(VII), 804.

<sup>136</sup> (5), s. 130(2).

<sup>137</sup> (2), s. 3C. Similarly, in *Sudan* (1), s. 35(8), the law provides, yet only with respect to wage cuts, that upon the worker's request the employer has to supply a statement showing details of such cuts.

<sup>138</sup> (2), s. 29(1).

<sup>139</sup> (1), s. 654.

<sup>140</sup> (1), s. 1638E(1).

<sup>141</sup> (1), s. 29(2).

<sup>142</sup> (1), s. 1614E(1).

<sup>143</sup> (1), s. 128(21).

<sup>144</sup> (1), s. 61(3).

of the enterprise in which they are employed must receive at the time such commission or share is paid to them full details as to the method of calculation of the commission and the total amount of profit of the enterprise in respect of the period to which the payment relates.

**446.** The various provisions on the evidential weight of wage statements and the presumptive significance of the acceptance of such documents by the worker are of particular interest. In a number of countries, the law provides that the mere acceptance of a wage slip by employees without protest or reservation may not be deemed equivalent to a waiver of payment of all or part of any wages, additions to wages, bonuses or allowances of any kind which are payable to them under laws and regulations or the contract. This is the case, for instance, in *Central African Republic*,<sup>145</sup> *France*,<sup>146</sup> *Madagascar*,<sup>147</sup> *Swaziland*<sup>148</sup> and *Tunisia*.<sup>149</sup> Similarly, in *Iraq*,<sup>150</sup> an employer may be discharged in respect of outstanding wages only once the worker has signed the wage register, although such signature does not constitute a waiver of any right on the worker's part. The same applies in *Jordan*,<sup>151</sup> where the presence of the worker's signature on any statement or record of remuneration, or any receipt for a specified amount, may not extinguish the latter's right to any sum additional to the payment made by virtue of law, regulations or contract.

**447.** In addition, the law in *Benin*,<sup>152</sup> *Chad*,<sup>153</sup> *Mauritania*<sup>154</sup> and *Senegal*<sup>155</sup> provides that, in the event of a dispute concerning the payment of wages, supplements, bonuses and allowances of all kinds, non-payment shall be presumed irrefutable (except in the case of *force majeure*) unless the employer can produce the pay register duly initialled by the worker or a similarly initialled or countersigned copy of the pay slip respecting the disputed wage. In *Egypt*,<sup>156</sup>

<sup>145</sup> (1), s. 106. This is also the case in *Benin* (1), s. 226; *Cameroon* (1), s. 69(4); *Chad* (1), s. 264; *Comoros* (1), s. 105; *Congo* (1), s. 90; *Côte d'Ivoire* (1), s. 32.6; *Democratic Republic of the Congo* (1), s. 85; *Djibouti* (1), s. 101; *Gabon* (1), s. 153; *Guinea* (1), s. 218; *Mali* (1), s. L.110; *Mauritania* (1), s. 91; *Niger* (1), s. 164; *Togo* (1), s. 97.

<sup>146</sup> (1), s. L.143-4.

<sup>147</sup> (1), s. 74.

<sup>148</sup> (1), s. 61(2).

<sup>149</sup> (1), s. 145.

<sup>150</sup> (1), s. 52(2).

<sup>151</sup> (1), s. 46(b).

<sup>152</sup> (1), s. 226. See also *Burkina Faso* (1), s. 115; *Congo* (1), s. 90; *Democratic Republic of the Congo* (1), s. 84; *Gabon* (1), s. 153.

<sup>153</sup> (1), s. 265.

<sup>154</sup> (1), s. 92.

<sup>155</sup> (1), s. L.117.

<sup>156</sup> (1), s. 35.



an employer cannot be presumed to have paid the wage to a worker unless the latter acknowledges its receipt by signing the wage register, the wage slip or a special receipt drawn up for the purpose. In Seychelles,<sup>157</sup> where an employer fails to keep a record of the wage payment in the pay book, including some evidence of receipt of payment by the worker, a presumption that the employer has not made the payment arises against the employer.

**448.** Finally, in some countries, such as *Comoros*,<sup>158</sup> no regulations have as yet been adopted to establish the particulars of workers' individual pay slips, as required under the general labour legislation. In the case of *Belarus*,<sup>159</sup> the Government has not yet established the rules for the keeping of basic labour documents, including the wage settlement form, which should contain details of wages and wage deductions. In *Austria*,<sup>160</sup> the exact form and content of the itemized pay statement is left to be determined by the enterprise agreement, in the absence of binding laws on the subject. In response to repeated observations made by the Austrian Federal Chamber of Labour concerning the need to establish a clear legal basis for the employer's obligation to supply a regular accounting statement of the wages paid, the Government has stated that the provisions of Article 14 of the Convention allow for a certain flexibility and that, while there are no detailed provisions in law on the manner of payment of wages for most workers, such arrangements are assured through collective agreements.

### 3. Maintenance of payroll records

**449.** Paragraph 8 of the Recommendation provides that employers should be required in all appropriate cases to maintain wage records showing, in respect of each worker, the wage particulars specified in Paragraph 7, namely the gross and net amount of wages, and the amount of any deductions. This provision therefore expands on the requirement set forth in Article 15(d) of the Convention, which calls for the maintenance, in all appropriate cases, of adequate records in an approved form and manner.<sup>161</sup> In many countries the law seems to follow the above provisions to the letter and provides for the

<sup>157</sup> (1), s. 36(2).

<sup>158</sup> (1), s. 105.

<sup>159</sup> (1), s. 52.

<sup>160</sup> (1), s. 97(1). Similarly, in Switzerland (2), s. 323b, the law requires the provision of a detailed account at the time of payment without specifying the wage particulars that such an account should include.

<sup>161</sup> It should be noted that the text originally proposed by the Office contained a reference to "wage records", but the word "wage" was deleted during the first Conference discussion on the ground that this qualification might be restrictive in its effect; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 464.

maintenance of wage records containing the same particulars as those appearing in wage statements. For example, in the *Republic of Moldova*,<sup>162</sup> the employer is obliged to ensure that all the wage details contained in the pay slip are also recorded in appropriate pay-sheets. Similarly, in Morocco<sup>163</sup> and *Swaziland*,<sup>164</sup> every employer is obliged to keep a wage register containing, in respect of each employee, all the particulars required to appear in the statement of earnings and to keep such register for a period of three years from the date of the last entry. In *Tunisia*,<sup>165</sup> the items mentioned on the pay slip must be entered into a wage ledger, the production of which may be demanded at any time by a labour inspector. In some countries, such as China<sup>166</sup> and Croatia,<sup>167</sup> the wage statement takes the form of a copy of the payroll account relating to each employee. Inversely, in *Paraguay*,<sup>168</sup> *Spain*<sup>169</sup> and *Uruguay*,<sup>170</sup> the national legislation requires that copies of the wage statements delivered to workers must be stored for a period which varies from five to ten years in order to facilitate labour inspection.

**450.** In certain countries, such as *Burkina Faso*,<sup>171</sup> *Djibouti*,<sup>172</sup> *Madagascar*<sup>173</sup> and *Senegal*,<sup>174</sup> all the wage details contained in an individual pay slip have to be noted by the employer in a register kept for this purpose, known as the “employer’s register”. The employer’s register consists of three parts: the first part includes personal information on all workers and particulars of their contracts; the second contains full particulars of work performed, wages and leave; and the third is reserved for certifications, notices or comments by

<sup>162</sup> (1), s. 102; (2), s. 19(3). Similarly, in *Ukraine* (2), s. 30, the legislation calls for a reliable accounting of work and an accounting record of expenditures on the payment of wages. See also *Nicaragua* (3), s. 1, and *Peru* (5), s. 18.

<sup>163</sup> (1), s. 11.

<sup>164</sup> (1), s. 151(1)(a), (2)(b).

<sup>165</sup> (1), s. 144. See also *Rwanda* (4), s. 4.

<sup>166</sup> (1), s. 6.

<sup>167</sup> (1), s. 83(4). Similarly, in *Bulgaria* (1), s. 270(3), the legislation provides simply that wages must be paid to the employee from a payroll or against receipt.

<sup>168</sup> (1), s. 235.

<sup>169</sup> (6), s. 3.

<sup>170</sup> (5), ss. 2, 4.

<sup>171</sup> (1), s. 233; (2), ss. 5, 6, 9, 10. This is also the case in *Benin* (1), s. 285; *Central African Republic* (1), ss. 106, 171; (2), s. 2; *Chad* (1), s. 498; (3), ss. 2, 3, 5, 7, 8; *Côte d’Ivoire* (1), ss. 32.5, 93.2; (2), ss. 57, 59, 64, 66; *Mali* (1), ss. L.107, L.108, L.130; (3), ss. A.109-11, A.109-12; *Mauritania* (1), s. 91.

<sup>172</sup> (1), ss. 101, 171.

<sup>173</sup> (1), s. 149.

<sup>174</sup> (1), ss. L.116, L.221; (2), ss. 6, 8, 13.

labour inspectors. The register must be kept for five to ten years after the date of the last entry and has to be produced at the request of labour inspectors. Only agricultural enterprises employing five to ten workers or fewer may temporarily be exempted from the maintenance of wage records and the delivery of wage statements, while persons employing domestic workers are exempted from the obligation to keep a wage register, but not from the obligation to issue a pay slip. Similar requirements for the maintenance of an employer's register are laid down by the labour laws of *Cameroon*,<sup>175</sup> *Mauritius*<sup>176</sup> and *Niger*.<sup>177</sup>

**451.** In Australia, under the state legislation of Western Australia,<sup>178</sup> employers are obliged to keep records containing such details as the gross and net amounts paid to employees, all leave taken by employees, whether paid or unpaid, any information necessary for the calculation of the entitlement to long service leave and other particulars as prescribed by relevant regulations. These wage records must be in a form that is legible and have to be prepared using indelible material, or stored in electronic form, and they must be made in relation to each payment within 14 days of the payment. Such records may be viewed by either the employee, upon his/her written request, by a person authorized by the employee, or by an industrial inspectorate. The duty placed on the employer to let the employee inspect the records must be complied with not later than the end of the next pay period after the request for inspection is received, and is not affected by the fact that the employee may no longer be employed by the employer at the time the request is made. In the United States,<sup>179</sup> under laws and regulations at both the federal and state levels,

<sup>175</sup> (1), ss. 69(1), 116(1); (2), ss. 4, 6. This is also the case in *Comoros* (1), ss. 105, 187; *Congo* (1), ss. 90, 182; *Togo* (1), ss. 97, 166.

<sup>176</sup> (1), s. 49(2)(b). Only employers employing 15 or more workers are obliged to keep a remuneration book.

<sup>177</sup> (1), ss. 163, 274; (3), ss. 212, 214.

<sup>178</sup> (10), ss. 44(2), 45(1), (2); (11), s. 4; (12), ss. 47(2), 48. Similarly, in the United Kingdom: Isle of Man (15), s. 6; (16), s. 38, and Virgin Islands (22), s. C39(1), (2), reference is made to the possibility of computerized maintenance of records and the employee's right to request the presentation of such records for inspection.

<sup>179</sup> (1), s. 11(c); (2), s. 516.5. See also Alaska (5), s. 23.10.100(a); Arizona (7), s. 23-721; Arkansas (8), s. 11-2-115(a)(2); California (9), s. 226(a); Colorado (10), s. 8-4-102(3); Connecticut (11), s. 31-66 and (12), s. 31-60-12(a); Delaware (13), s. 1108(6); Georgia (15), s. 34-2-11; Hawaii (16), s. 388-7(6); Idaho (17), s. 45-610(1); Illinois (18), s. 115/10; Iowa (20), s. 91A.6(1)(d); Kentucky (22), s. 337-320 and (23), s. 1:066(1), (2); Louisiana (24), s. 14(B); Maine (25), s. 622; Maryland (26), s. 3-424; Michigan (28), s. 408.479(1), (3); Minnesota (29), s. 181.88; Missouri (32), s. 290.520; Nevada (35), s. 608.115(1), (3); New Hampshire (36), s. 275:49(VI); New Jersey (37), s. 34:11-4.6; New Mexico (38), s. 50-4-9(A); New York (39), s. 195(4); North Carolina (40), s. 95-25.15(b) and (41), ss. 13-12.0801, 13-12.0802; North Dakota (42), s. 34-06.1-07; Ohio (43), s. 4111.08; Pennsylvania (46), s. 231.31(a); Rhode Island (47), s. 28-12-12; South Carolina (48), s. 41-10-30(B); South Dakota (49), s. 62-6-4; Tennessee (50),

employers are required to keep true and accurate employment records for employees regarding the wages, hours and other conditions and practices of employment, and to preserve such records normally for a period of at least three years. In Canada,<sup>180</sup> all jurisdictions have enacted provisions requiring employers to keep detailed personnel records that include data on wages. Normally, the information recorded includes the wage rate, gross and net amount of wages, hours worked, overtime, vacation pay, deductions and other particulars. Depending on the jurisdiction, registers must be kept for a period that varies from 12 months to five years after the work was performed or after the entry was recorded (in half the jurisdictions the period is 36 months), and must be available at all reasonable times for examination by inspectors.

**452.** Furthermore, in India,<sup>181</sup> every employer must maintain a register of wages in respect of persons employed showing such particulars as the wages paid to them and the deductions made from their wages, and the entries in respect of each employee pertaining to a wage period should bear the signature or thumbprint of the employee concerned. Such wage registers must be preserved for a period of three years after the date of the last entry and must be produced on demand for the labour inspector during the course of an inspection of the establishment. In *Malaysia*,<sup>182</sup> every employer must keep a register containing information relating to employees, i.e. personal details, details concerning the terms and conditions of employment and details of wages and allowances earned during each wage period. Such a register must be preserved for not less than six years and be available for inspection. In Namibia,<sup>183</sup> every employer must keep a wage register indicating for each employee the wage scale, pay period, time per day or shift worked, as well as the total number of hours worked during the pay period, the remuneration payable in respect of ordinary working hours, overtime, night work, work on public holidays and allowances, the gross and net amounts of remuneration payable and the details of any deductions.

s. 50-2-103(i); Utah (52), s. 34-28-10(1); Vermont (53), s. 393; Washington (55), s. 49.46.070 and (56), s. 296-126-050(1); West Virginia (57), s. 21-5-9(6); Wyoming (59), s. 27-4-203.

<sup>180</sup> (1), s. 252(2); (2), s. 24(2). See also Alberta (4), ss. 14(1), 15; British Columbia (6), s. 28; Manitoba (7), s. 135(1), (3); New Brunswick (8), s. 60(1), (3); Newfoundland and Labrador (9), s. 63(1), (2), (3); Nova Scotia (12), ss. 15, 16(a); Ontario (14), s. 15(1), (5); Prince Edward Island (15), s. 33(1); Saskatchewan (17), s. 70(1), (2).

<sup>181</sup> (1), s. 13A; (3), s. 26(1), (3), 26A, 26B. This is also the case in El Salvador (2), s. 138.

<sup>182</sup> (1), s. 61(1), (2); (3), ss. 5, 6, 7.

<sup>183</sup> (1), s. 4(1)(a), (2); (2), Schedule, s. 1. There is also an obligation to keep a separate register relating to the granting of leave and a register concerning foreign employees. All such records must be retained for a period of not less than five years.

**453.** In addition, in *Belgium*,<sup>184</sup> employers are bound by law to keep two types of employment documents, the personnel register and the individual accounts book. This latter document records for each pay period, among other data, the number of days of work, all the wage components, including the basic wage, pay supplements, benefits in kind, the 13th month and the end-of-year premium, the amount of social security contributions, the taxable amount and the net amount of wages. The above documents must be preserved for five years. In the *Democratic Republic of the Congo*,<sup>185</sup> every employer, except for persons exclusively employing domestic staff, is required to keep a pay book containing all wage details with regard to payments made to the employees. In *Algeria*,<sup>186</sup> the pay book must indicate the worker's name and position, the pay period, the basic wage, benefits, including overtime pay, and any deductions, especially those related to the social security and tax systems. Pay books, as well as all other special books and registers, have to be made available at the request of any competent authority and be kept for ten years after the date of the last entry. In *Dominica*,<sup>187</sup> every employer is obliged to establish and keep, for a period of at least two years after the work is performed, a register of wage payments showing, with respect to each employee, among other indications, the wage rate, the hours worked and the actual earnings and payments made. In *Argentina*,<sup>188</sup> *Brazil*<sup>189</sup> and *Costa Rica*,<sup>190</sup> employers are obliged to keep special books containing full particulars of the persons in their employment, such as the dates of commencement and termination of employment, the remuneration due and paid, as well as details concerning any persons in respect of whom family allowances are payable.

**454.** In other countries, the legislation makes provision for both the keeping of wage ledgers and the delivery of wage statements, without always specifying the particular items to be included in these documents. This is the

<sup>184</sup> (4), s. 4(1); (5), ss. 5, 16, 25. See also Germany (1), s. 114(1), (2), and United Kingdom: Falkland Islands (10), s. 4(5).

<sup>185</sup> (1), ss. 188, 189, 190.

<sup>186</sup> (1), s. 156; (2), ss. 3, 13, 17.

<sup>187</sup> (1), s. 17(1); (4), s. 29(1).

<sup>188</sup> (1), s. 52. See also *Venezuela* (4), s. 4, where by virtue of a ministerial decision, employers have to submit to the competent authorities once every three months statistical information concerning the number of workers employed, the type of employment, the hours of work performed, and the amount of wages paid. In *Chile* (1), s. 62, an employer employing five or more persons must keep a remuneration book to be stamped by the tax authorities.

<sup>189</sup> (2), s. 41; (9), s. 1(iv).

<sup>190</sup> (1), s. 176. This requirement applies to enterprises employing ten or more workers. This is also the case in *Honduras* (2), s. 380.

case, for instance, in *Egypt*,<sup>191</sup> *Guinea*<sup>192</sup> and *Israel*,<sup>193</sup> where employers are bound to keep ledgers of the wages due to their workers and the wages paid, as well as to issue to their employees a detailed written statement of the wages paid and amounts deducted. In the *Syrian Arab Republic*,<sup>194</sup> the payment of wages is certified either by the worker's signature of a payroll record, or by acceptance of a wage slip established in two copies. In the *United Republic of Tanzania (Zanzibar)*,<sup>195</sup> every employer is required to keep a remuneration book showing, in respect of every employee, the days worked and the remuneration paid, and on the payment of such remuneration, the employer has to issue a pay slip and cause the employee to affix a signature or thumbprint in the remuneration book. The remuneration book must be preserved for a period of three years and be produced for the labour inspection services on request.

**455.** In contrast, in certain countries, such as *Colombia*,<sup>196</sup> *Ecuador*,<sup>197</sup> *Iraq*,<sup>198</sup> *Panama*,<sup>199</sup> *Sri Lanka*<sup>200</sup> and *Zambia*,<sup>201</sup> there is no specific provision requiring employers to provide workers regularly with particulars of the wage payment for each period, but only that they should maintain a record of the wages paid and of every deduction made and that such records should be kept at the workplace and should be made available for inspection at the request of the competent authorities. This is also the case in *Botswana*,<sup>202</sup> where the national

<sup>191</sup> (1), s. 35.

<sup>192</sup> (1), ss. 217, 219.

<sup>193</sup> (1), s. 24.

<sup>194</sup> (1), ss. 49, 69; (2), ss. 1, 3. In *Lebanon* (2), s. 4, the law makes explicit reference to Articles 14(b) and 15(d) of the Convention and lays down that all employers must inform their workers in a clear manner of the particulars of their wages for the pay period concerned and must keep a record for this purpose.

<sup>195</sup> (2), s. 48(1), (2).

<sup>196</sup> (1), ss. 41, 486(1). See also *Guatemala* (2), ss. 61, 102.

<sup>197</sup> (2), s. 42(7).

<sup>198</sup> (1), ss. 52(1), 149(1)(b).

<sup>199</sup> (1), ss. 128(11), 152.

<sup>200</sup> (2), ss. 3(1), (2), 41(1), (2); (5), s. 24; (4), s. 17(1)(ii). The law further provides that every employer must keep a remuneration record in respect of each employee containing full particulars for each pay period, including an acknowledgement on the part of the employee in proof of receipt of the net remuneration. Wage records must be kept for four years.

<sup>201</sup> (1), s. 50. See also *Zimbabwe* (1), s. 125(1), (4).

<sup>202</sup> (1), s. 93(1); (5), s. 14(1). In *Uganda* (2), ss. 29, 30, every employer is bound to keep adequate and proper books of accounts in respect of the wages of employees and to produce such books for examination to any authorized officer. Employers are also required to keep a muster roll of all employees containing such particulars as the rate of pay, deductions, the amount earned and the amount paid. In *Guyana* (1), ss. 10, 17(2), and *Nigeria* (1), s. 75(1), the law merely provides

legislation, while not specifically addressing the question of wage statements, contains detailed provisions on record-keeping requiring every employer to maintain records, books and accounts in respect of each employee showing, among other information, the wage rate and the pay interval, particulars of all payments made on termination of the contract and particulars of other forms of remuneration, such as overtime payments, production bonuses and cost-of-living allowances. In the *Philippines*,<sup>203</sup> the payment of wages is effected by means of a payroll containing, in respect of each employee, information on the pay rate, the amount due for regular and overtime work, any deductions and the amount actually paid. Every employee has to sign the payroll, which must be kept at the workplace and be retained for at least three years from the date of the last entry. Similarly, in Thailand,<sup>204</sup> an employer who employs ten or more persons must maintain documents relating to the payment of wages, which should include information on the rate and amount of wages received by each employee and which should be signed by each employee at the time of payment as evidence of such payment. An employer is further required to keep the documents relating to the payment of wages for not less than two years from the date of such payment.

**456.** Furthermore, in Seychelles,<sup>205</sup> employers are required to keep pay books for the purpose of maintaining a record of the wages due to each of the workers, of the deductions made therefrom and of the amounts actually paid. No specific provision is made for the issue of individual wage statements to workers, other than the requirement that at the time of each payment pay books should include a record of the payment, together with evidence of receipt of payment by the worker. Such pay books are to be kept at the place of employment and have to be made available for inspection by the competent officer. In *Malta*,<sup>206</sup> every employer except a person employing domestic or casual workers, must keep a register showing, in respect of each employee, among other information, the total wages paid each week, the nature of the work

that every employer must keep such records of wages as are necessary to show that the provisions of the Labour Code are being complied with.

<sup>203</sup> (2), Bk. III, Rule X, ss. 6, 10, 11, 12.

<sup>204</sup> (1), ss. 114, 115. In Singapore (1), s. 95(1), the Employment Act requires every employer to keep at the place of employment a register, made accessible to the workers, showing the basic rate of pay and allowances, the amount earned and the amount of deductions made from the earnings of each employee. Moreover, the Government of Singapore has reported that, although no national laws provide for wage statements, it is a general practice across industries for wage statements to be issued to employees to keep them informed of the particulars of their wages for the salary period concerned. In Japan (2), ss. 108, 109, and Republic of Korea (1), ss. 41, 47, the legislation requires that an employer maintains a wage ledger and preserves such document for a period of three years.

<sup>205</sup> (1), ss. 35(1), 36(1), 68.

<sup>206</sup> (1), s. 14(1), 26(3).

in which the employee is engaged, the work hours accomplished and the wage rates applied, while in *Sudan*,<sup>207</sup> employers are bound to keep a record on every worker showing, among other data, the wage, any deductions made and the annual and sick leave, with their dates. In *Libyan Arab Jamahiriya*,<sup>208</sup> Saudi Arabia<sup>209</sup> and *Yemen*,<sup>210</sup> the law provides for the worker's signature upon a document such as a pay register, payroll or special receipt certifying the receipt of wages. In the United Arab Emirates,<sup>211</sup> every employer engaging 15 or more employees is obliged to maintain a remuneration register showing the amount of each employee's daily or monthly pay, any bonuses, piece-work wages or commissions paid, days of work and the date of final departure from work, while in Bahrain,<sup>212</sup> Kuwait<sup>213</sup> and Qatar,<sup>214</sup> employers are bound to keep a workers' register containing important particulars in respect of each worker, such as occupation, date of engagement, current wage, annual and sick leave granted, penalties inflicted and the date and reasons for the termination of employment.

**457.** In New Zealand,<sup>215</sup> the law requires every employer at all times to keep a wages and time record showing, in respect of each employee, information including the hours or days worked by the employee, the wages paid at each pay period and the method of calculation. In addition, the Government of New Zealand has indicated that, even though there are no national laws or regulations that provide for wage statements to be issued at the time of each payment of wages, nothing prevents an agreement to this effect from being established, based on custom and practice. In Ghana,<sup>216</sup> labour regulations prescribe that every employer who employs persons to whom a minimum remuneration order applies must keep a record of the remuneration paid to the persons concerned, while in *Cuba* and *Jordan*, the obligation of maintaining adequate wage records flows indirectly from the laws and regulations concerning social security which require wage registers and payment rolls to be communicated to the social security institution.

<sup>207</sup> (1), s. 65.

<sup>208</sup> (1), ss. 27, 37, 84.

<sup>209</sup> (1), s. 118.

<sup>210</sup> (1), ss. 66(2), 89(e).

<sup>211</sup> (1), s. 54.

<sup>212</sup> (1), ss. 69, 99. The law also requires employers to make it possible for workers to consult the details of their wages and, whenever necessary, to ascertain the accuracy of the register. See also Oman (1), s. 17.

<sup>213</sup> (1), s. 47.

<sup>214</sup> (1), s. 73.

<sup>215</sup> (5), s. 130(1).

<sup>216</sup> (2), s. 17; (1), s. 48(1)(g).



**458.** Finally, in a small number of countries, such as *Bolivia, Islamic Republic of Iran, Romania* and *Tajikistan*, there is no obligation laid down in national laws or regulations for either the provision of wage statements or the maintenance of adequate wage records, as required by Articles 14(b) and 15(d) of the Convention.<sup>217</sup>

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**459.** The above merely serves to confirm the importance of establishing a firm requirement to inform workers of the essential wage conditions applicable to their contract or employment relationship, as well as the requirement to provide at the time of each payment of wages documented information detailing earnings for the pay period concerned. Although the drafters of the Convention decided to phrase the duty to provide information on wages in non-binding terms, leaving it to national authorities to determine whether implementing measures are needed, the relevant legislation in most member States gives effect to the provisions of Article 14 of the Convention by laying down formal requirements. Whether through individual references in the employment contract, collective notification through the posting of notices and works regulations, the systematic maintenance of wage registers and payroll records, or the supply of itemized wage statements, binding arrangements have been established in practically all countries with a view to informing workers in advance, in a clear and comprehensive manner, of the rules governing the payment of their remuneration. In addition to ensuring the provision of essential information to workers, some of these arrangements are also designed to facilitate effective supervision and control of the manner in which effect is given in practice to the requirements set out in the Convention.

**460.** In the Committee's opinion, under modern conditions, the need to ensure greater transparency and protection of workers' rights has raised the principle of keeping workers adequately informed of their wage conditions to the level of one of the fundamental requirements of the Convention. It would even appear that being sufficiently informed of wage particulars, such as all the various wage components and the applicable rates, the method of calculation and compulsory deductions, is now almost as important as being paid on time and in full, and is in any event merely indispensable for a full understanding of the manner in which the amount of wages due is reckoned. Furnishing a worker with a detailed wage statement can, apart from giving the worker relevant information on the different elements of the wages set out in the statement, provide a

<sup>217</sup> For instance, the Committee has addressed direct requests on this point to *Bolivia* in 2001, *Romania* in 1995 and *Islamic Republic of Iran* in 1993.

valuable means of proof regarding the existence of the employment contract and other matters relating to the employment relationship. However, a number of the reports received suggest that, if the wage statement is signed by the worker, there is a risk that such a document may be interpreted as amounting to acceptance by the worker that the wages owed to him have been paid and a renunciation of any further claims in this respect. The Committee emphasizes that the requirement for a wage statement should be such that the statement serves to provide information rather than being used inappropriately in a way detrimental to the worker's interests.

## CHAPTER VIII

### ENFORCEMENT OF WAGE PROTECTION LEGISLATION

**461.** One of the essential obligations arising out of the Convention is that the national legislation giving effect to its principles must provide for effective enforcement measures: (a) by defining the persons or institutions responsible for compliance; and (b) by prescribing appropriate sanctions or other remedies for any violations of the respective provisions.<sup>1</sup> Article 15 further provides that the laws and regulations giving effect to the provisions of the Convention must be made available for the information of persons concerned,<sup>2</sup> and also that they must provide for the maintenance, in all appropriate cases, of adequate records in an approved form and manner. This latter requirement has been analysed in [Chapter VII](#) above and will not be discussed in the present chapter.

<sup>1</sup> Throughout the preparatory work on the instruments under consideration the need was repeatedly expressed to define the measures necessary to ensure the effective enforcement of national laws and regulations concerning the protection of wages. The only difficulty with the list of measures originally suggested by the Office arose in connection with the proposed “maintenance of a system of inspection adequate to ensure effective enforcement”. The reference to inspection was finally left out of the draft instrument, as it was considered desirable to leave to governments a measure of latitude in deciding which aspects of the wage protection system were of such a nature as to require specific action in the form of legislation enforceable by a labour inspectorate; see ILC, 31st Session, 1948, Report VI(c)(2), p. 87. With the exception of a reference to “other appropriate remedies” so that the term “penalties” might not be interpreted to mean only penal sanctions, the draft Article on enforcement measures was adopted in the form proposed by the Office; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 510. It may be recalled, in this regard, that the text of Article 15 of the Convention is that of the “model clause” adopted at the 29th Session of the Conference as part of the proposed conclusions relating to a Convention concerning social policy in non-self-governing territories; see ILC, 29th Session, 1946, *Record of Proceedings*, p. 489.

<sup>2</sup> The text originally proposed by the Office on this point was that the laws and regulations giving effect to the Convention should be “brought to the notice of all persons concerned”. This was considered by some governments as imposing an unreasonable obligation on the competent authority, and at the second Conference discussion it was changed to its present form; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 509. The intention is therefore not to require that the relevant legislation be brought to the notice of all persons concerned, but merely that the texts should be given sufficient publicity, for instance, through publication of the relevant provisions in an official gazette.

**462.** Judges and courts have a vital role to play in the implementation of national legislation giving effect to the provisions of the Convention, by stating and enforcing where necessary the right of a worker to receive wages owed in the event that the employer fails to pay all or part of the wages. The efficacy with which the principles derived from the Convention are put into practice depends to a considerable extent on the existence of an accessible and effective judicial system. However, the judicial system would not in itself alone be sufficient to ensure the effective application of legislation without the existence of officials or institutions distinct from the courts and responsible for the supervision and monitoring of national legislation.

**463.** It is no coincidence that whenever the Committee has had to recommend that governments take specific measures with a view to ensuring full compliance with the provisions of the Convention, it has invariably made reference to the need to strengthen the supervision and inspection machinery, and to impose effective sanctions in the event of infringements. A graphic illustration of this point is the ongoing dialogue with the governments of certain countries that are confronted with serious problems of income insecurity and wage arrears, when the Committee has persistently called for effective supervision, notably through the reinforcement of the activities of the labour inspectorate, and the strict application of appropriate penalties in order to prevent and punish future violations.<sup>3</sup>

### **1. Supervising the enforcement of wage protection rules and regulations**

**464.** According to the information available, in the large majority of countries the application of legal provisions respecting remuneration, conditions of work and health and safety is monitored by the labour inspection service, which is in most cases a specialized body of public officials placed under the authority of the Minister of Labour. Labour inspectors are entrusted with considerable powers of enforcement and prerogatives and must therefore satisfy the highest standards of integrity, impartiality and confidentiality. Given the particular nature of their function, in some cases the law confers upon labour inspectors the status of judicial officers. Indeed, labour inspectors are given the duty of supervising, at the workplaces under their control, the application of the laws and regulations in force concerning labour conditions, including the form, place and time of the payment of wages, the provision of wage statements, the keeping of wage records, and the calculation of the amounts of earnings paid and

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<sup>3</sup> See, for instance, RCE 2002, 322 (*Central African Republic*), 337 (*Russian Federation*), 343 (*Ukraine*), 347 (*Zambia*); RCE 2001, 365 (*Ukraine*); RCE 2000, 215 (*Russian Federation*); RCE 1999, 319 (*Ukraine*); RCE 1998, 209 (*Russian Federation*).

the deductions made. Provisions on the establishment and mandate of the labour inspectorate are laid down in the general labour legislation in a large number of countries, such as *Côte d'Ivoire*,<sup>4</sup> *Ecuador*,<sup>5</sup> *Guatemala*,<sup>6</sup> *Lebanon*,<sup>7</sup> *Madagascar*,<sup>8</sup> *Mexico*,<sup>9</sup> *Poland*,<sup>10</sup> *Sri Lanka*<sup>11</sup> and Thailand.<sup>12</sup> It should be recalled, in this connection, 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 securing the enforcement of the legal provisions relating to wages.

**465.** National legislation frequently contains detailed provisions on the powers granted to inspectors to carry out their functions. As a general rule, inspectors are empowered to: enter freely without prior warning at any time of the day or night any establishment subject to inspection; undertake any investigations, examinations or inquiries which they deem necessary in order to

<sup>4</sup> (1), ss. 91.1 to 91.10. This is also the case in *Algeria* (6), ss. 2 to 16; *Bahrain* (1), ss. 147 to 152; (5), ss. 2, 6, 7, 14; *Benin* (1), ss. 266 to 277; *Brazil* (2), s. 626; *Bulgaria* (1), ss. 399 to 404; *Burkina Faso* (1), ss. 218 to 229; *Central African Republic* (1), ss. 153 to 160; *China* (1), s. 18; (2), ss. 85 to 88; *Colombia* (1), ss. 485 to 487; *Comoros* (1), ss.s.154 to 177; *Congo* (1), ss. 151 to 161; *Costa Rica* (3), ss. 88 to 102; *Democratic Republic of the Congo* (1), ss. 155 to 168; *Djibouti* (1), ss. 145 to 160; *Dominica* (4), ss.s.28, 29; *Egypt* (1), ss. 160 to 164; *Estonia* (1), s. 145; *Gabon* (1), ss. 231 to 249; *Guinea* (1), ss. 352 to 366; *Islamic Republic of Iran* (1), ss. 96 to 106; *Israel* (3), ss. 1 to 3; *Japan* (2), ss. 97 to 105; *Kenya* (1), s. 50; (2), s. 23; *Republic of Korea* (1), ss. 104 to 108; *Mali* (1), ss. L.290 to L.300; *Malta* (1), s. 39; *Mauritania* (1), Bk. V, ss. 21 to 36; *Namibia* (1), ss. 104, 105; *Niger* (1), ss. 248 to 264; *Paraguay* (1), s. 408; *Saudi Arabia* (1), ss. 23 to 38; *Senegal* (1), ss. L.188 to L.204; *Slovakia* (6), ss. 2(1), 5(3), 6(3), 13(2); *Slovenia* (1), s. 227; *Spain* (16), ss. 1 to 21; *Swaziland* (1), ss. 8 to 12; *Syrian Arab Republic* (1), ss. 212 to 214; *Togo* (1), ss. 143 to 157; *Tunisia* (1), ss. 170 to 182; *Turkey* (1), ss. 88 to 90, 95; *United Arab Emirates* (1), ss. 166 to 180; *Venezuela* (1), ss. 588 to 596. In the *Russian Federation* (1), ss. 353 to 369, according to the Government's report, under Order No. 1035 of 9 September 1999, the various agencies of the Ministry of Labour and the Federal Labour Inspectorate were united and a new Department of State Supervision and Monitoring of the Implementation of Labour and Safety and Health Legislation has been set up in the Ministry of Labour and Social Development. In *Ukraine* (2), s. 35, according to the information supplied by the Government, by decisions of the Cabinet of Ministers No. 1351 of 30 August 2000 and No. 1771 of 29 November 2000, the State Department for the Supervision of the Observance of Labour Legislation was established in the Ministry of Labour and Social Policy.

<sup>5</sup> (2), ss. 551 to 556.

<sup>6</sup> (2), ss. 278 to 282.

<sup>7</sup> (2), s. 5; (3), ss. 2 to 12.

<sup>8</sup> (1), ss. 131 to 141.

<sup>9</sup> (2), ss. 540 to 550.

<sup>10</sup> (1), ss. 284 to 289.

<sup>11</sup> (2), ss. 52 to 55.

<sup>12</sup> (1), ss. 139 to 142.

satisfy themselves that the provisions of the labour legislation in force, including all collective agreements, are being duly observed, and in particular to question the employer and employees of an enterprise on any matters concerning the application of these provisions; demand the production of any books, registers or documents prescribed by the labour legislation and to copy such documents; and also demand the posting of notices which are required to be displayed by the statutory provisions. In the discharge of their duties, labour inspectors or other labour supervision officers are entitled to: formulate suggestions to the employer and to the workers; address warnings to the employer; report in writing any failure to comply with statutory requirements or refer cases directly to the competent judicial authorities; and even order that immediate executory measures be adopted in the case of imminent and serious risk to the health or safety of workers. These powers are generally in accordance with the provisions of the ILO Conventions and Recommendations respecting labour inspection.<sup>13</sup> The Committee recalls that it has referred in detail to these powers in its 1985 General Survey, which covers the instruments on labour inspection.<sup>14</sup>

**466.** In some countries, the national legislation requires the labour inspectorate to publish an annual report containing, among other information, detailed statistical data concerning the organization and staffing of the labour inspection service, the number of enterprises subject to inspection and the number of workers concerned, the number of inspection visits, the infringements reported and the sanctions imposed.<sup>15</sup>

**467.** In many countries, the labour authorities are responsible for supervising the provisions respecting the payment of wages. These authorities are vested with much broader powers than labour inspectors and are entitled to perform a wide range of duties in ensuring compliance with the labour legislation. They often enjoy considerable discretion in granting exemptions, extending time limits and authorizing practices in derogation of existing rules and regulations. They may also be seized of individual complaints and decide any dispute referred to them, examine all kinds of applications submitted for their approval, make orders and impose sanctions within the limits of their competence. Specific instances in which such controlling authority is exercised

<sup>13</sup> See Labour Inspection Convention (No. 81) and Recommendation (No. 81), 1947, Labour Inspection (Mining and Transport) Recommendation (No. 82), 1947, and Labour Inspection (Agriculture) Convention (No. 129) and Recommendation (No. 133), 1969.

<sup>14</sup> See *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)*, ILC, 71st Session, 1985, Report III (Part 4B).

<sup>15</sup> This is, for instance, the case in *Gabon* (1), s. 247; *Russian Federation* (1), s. 356; *Saudi Arabia* (1), s. 35; *Swaziland* (1), s. 12; *United Arab Emirates* (1), s. 176.

over the application and enforcement of general labour legislation, including the standards concerning the protection of wages, include the Permanent Secretary of Labour in *Mauritius*,<sup>16</sup> the Labour Commissioner in *Uganda*<sup>17</sup> and *Zambia*,<sup>18</sup> the Chief Labour Officer in Ghana,<sup>19</sup> the Director-General of Labour in *Malaysia*,<sup>20</sup> and the Secretary of Labor in the *Philippines*.<sup>21</sup>

**468.** In the United States,<sup>22</sup> at the federal level, it is the responsibility of the Wage and Hour Division of the Department of Labor's Employment Standards Administration to exercise all powers and perform all functions, duties and services relating to the enforcement of the wage protection legislation. At the state level,<sup>23</sup> it is normally the Department of Labor under the direction and supervision of a commissioner that has the charge of the administration and enforcement of all laws, rules and regulations concerning the payment of wages. State authorities, such as the Commissioner of Labor or the Director of the Department of Labor or an authorized representative, are entitled to perform a wide range of duties, including the following: entering the place of business or employment at reasonable times; inspecting payroll records that relate to the question of wages paid or hours worked; questioning employees during work hours with respect to the wages paid and the hours worked; requiring from an employer full and correct statements in writing with respect to the payment of wages; investigating such facts, conditions, or matters as they may deem

<sup>16</sup> (1), ss. 51 to 53.

<sup>17</sup> (1), s. 1.

<sup>18</sup> (1), ss. 4 to 11.

<sup>19</sup> (1), ss. 48 to 57, 73.

<sup>20</sup> (1), ss. 3(1), 65 to 69.

<sup>21</sup> (1), ss. 5, 128, 129.

<sup>22</sup> (1), s. 4.

<sup>23</sup> See, for instance, Alaska (5), ss. 23.10.080, 23.10.100(b); Arizona (7), ss. 23-926, 23-927; Arkansas (8), ss. 11-2-115(b), 11-2-116(a); California (9), s. 1195.5; Connecticut (11), s. 31-59; Delaware (13), s. 1111; Georgia (15), s. 34-2-3; Hawaii (16), s. 388-9; Idaho (17), s. 45-616; Illinois (18), s. 115/11; Indiana (19), s. 22-2-9-4; Iowa (20), s. 91A.9; Kansas (21), s. 44-322; Kentucky (23), s. 1:035; Louisiana (24), ss. 1 to 11; Maine (25), s. 665; Maryland (26), s. 3-425(a); Michigan (28), ss. 408.479, 408.481; Minnesota (29), s. 181.9641; Missouri (32), s. 291.060; Montana (33), ss. 39-3-209, 39-3-210; Nebraska (34), s. 48-1206(1); Nevada (35), s. 608.180; New Hampshire (36), s. 275:51; New Jersey (37), s. 34:11-4.9; New Mexico (38), ss. 50-4-8, 50-4-9; New York (39), s. 196(1); North Carolina (40), ss. 95-25.15 to 95-25.19; North Dakota (42), ss. 34-06-02, 34-06-03; Ohio (43), s. 4111.04; Oklahoma (44), s. 40-165.7; Oregon (45) s. 653.040; Rhode Island (47), ss. 28-14-13, 28-14-19; South Carolina (48), s. 41-3-50; South Dakota (49), s. 60-5-4; Tennessee (50), s. 50-2-103(i); Utah (52), s. 34-28-9; Vermont (53), s. 393; Washington (55), s. 49.46.040; West Virginia (57), s. 21-5C-6. In contrast, in Massachusetts (27), ss. 2, 3, the Attorney-General is responsible for the enforcement of state laws concerning the protection of wages, while in the District of Columbia (14), s. 32-1306, it is the duty of the Mayor to ensure compliance with the labour legislation.

appropriate to determine whether any person has violated any rule or regulation; compelling the attendance of witnesses and the production of books, papers and documents by subpoena when necessary for the purpose of an investigation; holding hearings, taking depositions and affidavits in any proceedings before them; instituting court actions for penalties for any violation; promulgating rules and regulations for the proper administration and enforcement of state labour legislation. In some countries, such as *Iraq*,<sup>24</sup> the law does not contain any detailed provisions on enforcement, but merely vests the responsibility for its implementation with the Ministry of Labour.

**469.** Reference should also be made to the case of countries where trade unions exercise supervisory duties in respect of the application of labour legislation. For example, in *Belarus*,<sup>25</sup> *China*,<sup>26</sup> *Kyrgyzstan*<sup>27</sup> and *Tajikistan*,<sup>28</sup> the Labour Code provides that public control over the observance of the labour legislation is implemented by trade unions, as well as public inspectors and the commissions of the corresponding elective bodies of the trade union or of another representative body of the employees of an enterprise, agency, or organization. Similarly, in the *Republic of Moldova*<sup>29</sup> and *Ukraine*,<sup>30</sup> the Wages Act stipulates that supervision of the application of the legislation on wages is entrusted to the state labour administration, financial bodies and the bodies representing the interests of workers and employers. In the *Russian Federation*,<sup>31</sup> trade unions are authorized to conduct labour inspections in cooperation with state bodies and to submit for mandatory consideration reports and proposals on the elimination of any violations of labour protection requirements that are revealed. In *Bulgaria*,<sup>32</sup> workers' organizations are entitled to notify controlling bodies of violations of labour legislation and to demand the imposition of administrative sanctions against the offenders, while in *Slovakia*,<sup>33</sup> the law authorizes trade unions to carry out inspections only in matters of occupational safety and health in the workplace.

**470.** The Committee has regularly requested governments to continue to supply up-to-date and concrete information in their annual reports on all aspects

<sup>24</sup> (1), s. 152.

<sup>25</sup> (1), s. 463.

<sup>26</sup> (2), s. 88.

<sup>27</sup> (1), s. 462.

<sup>28</sup> (1), ss. 225, 227.

<sup>29</sup> (2), s. 23.

<sup>30</sup> (2), s. 35.

<sup>31</sup> (1), s. 370.

<sup>32</sup> (1), s. 406.

<sup>33</sup> (1), s. 149.



of the enforcement of the laws giving effect to the provisions of the Convention, including supervisory bodies and methods, the number of complaints filed with the labour inspectorate, the results of inspection visits, the total amount of wages paid following the intervention of labour inspectors, the number and nature of the violations reported and the amount of fines or the other dissuasive penalties imposed.

## 2. Sanctions and remedies for violation of wage protection rules and regulations

**471.** The legislation in practically all States includes provisions laying down sanctions, in the form of monetary fines or prison sentences, to be imposed in the event of the infringement of the provisions governing the terms or manner of payment of wages.

**472.** In some countries, labour laws provide only for pecuniary fines in the case of offences relating to the payment of wages. This is the case, for instance, in *Guinea*,<sup>34</sup> where any person who commits an infringement of the provisions concerning the payment of wages in legal tender, the periodicity and place of payment or the issue of a pay slip may be subject to a fine, the amount of which varies according to the seriousness of the offence. In *Venezuela*,<sup>35</sup> the law

<sup>34</sup> (1), s. 236. See also *Malaysia* (1), ss. 91, 92, 99A, and United Kingdom: Jersey (17), s. 12, *Montserrat* (21), ss. 15, 16(3), Virgin Islands (22), ss. C36, C39(3), where provision is made for a fine not exceeding a prescribed amount for failure to pay wages in legal tender or on time, for unauthorized deductions, and for supply of intoxicating liquor or other unlawful amenities or services as part of the terms of the employment contract. In the *Islamic Republic of Iran* (1), s. 174, a fine which may vary from 50 to 100 times the minimum daily wage of a worker is stipulated only for offences relating to unlawful deductions from wages. In Luxembourg (1), s. 9; (2), s. 40(4), all wage-related offences are punished with fines ranging from 5,000 to 200,000 francs, with the exception of violations concerning wage statements which carry fines from 2,500 to 50,000 francs. In *Malta* (1), s. 41(3), any person contravening the provisions on the protection of wages is liable to a fine of not less than five liri and not exceeding 50 liri. In *Mexico* (2), ss. 1000, 1001, infringements of the provisions on wages are punishable with fines ranging from 15 to 315 times the general minimum wage. In Morocco (1), s. 22; (5), s. 9, any violation relating to pay intervals, the time and place of wage payment or the issue of wage statements carries a fine of from 600 to 1,800 francs, whereas infringements in respect of works stores are punishable with fines ranging from 6,000 to 240,000 francs. Similarly, in *Nicaragua* (1), s. 86; (7), ss. 5, 22, wage-related offences are punished with fines of from 2,000 to 10,000 cordobas, while in *Panama* (1), s. 171, the fines may vary from 25 to 500 balboas.

<sup>35</sup> (1), s. 627. In *Ecuador* (2), ss. 42(6), 94, the failure of the employer to establish a works store carries a fine of from 100 to 500 sucres, while the non-regular payment of wages may be punished with a fine of up to three times the amount owed to the worker. In *Paraguay* (1), s. 390(b), the payment of wages by means of coupons or vouchers may be punished with a fine of 30 times the minimum daily wage rate. In *Uruguay* (17), s. 289; (2), s. 33; (5), s. 5; (18), s. 10, the failure to provide the worker with a pay slip may be punished with a fine of up to five times the worker's wage.

prescribes financial sanctions to the amount of not less than one-quarter of the minimum wage or more than one-and-a-half minimum wages for failure to pay workers in legal tender or at regular intervals, paying wages in forbidden places or making unjustified deductions. In other countries, such as *Argentina*<sup>36</sup> and *Spain*,<sup>37</sup> wage-related offences are listed according to their seriousness and the amount of the respective fines is graduated accordingly.

**473.** In the *Bahamas*,<sup>38</sup> any employer who contravenes any of the provisions of the Employment Act referring to wages is guilty of an offence and liable to a fine of a fixed amount. The situation is similar in *Ghana*,<sup>39</sup> where any employer who contravenes any of the provisions of the Labour Decree with respect to the protection of remuneration is subject to a fine not exceeding a prescribed amount. In *New Zealand*,<sup>40</sup> any breach of an employment agreement is punishable with a maximum penalty of \$5,000 for an individual and \$10,000 for a company or other corporation. In *Egypt*<sup>41</sup> and *Lebanon*,<sup>42</sup> an employer violating any of the provisions respecting wages is liable to a fine that is doubled in case of repetition. Similarly, in *Slovakia*,<sup>43</sup> the labour inspectorate is

<sup>36</sup> (3), Annex II, ss. 2, 3, 5. The non-regular payment of wages is deemed to be a minor offence, whereas contraventions concerning the place, time and form of payment or the amount of the wage carry higher fines or the closure of the enterprise for up to ten days. Similarly, in *El Salvador* (2), s. 627, the amount of the fine depends on the seriousness of the violation and the financial situation of the offender.

<sup>37</sup> (17), ss. 6(2), (3), 7(3), (4), 8(1), 18(2)(e), 39, 40(1). The law makes a distinction between minor offences (e.g. failure to issue a pay slip), serious offences (e.g. falsification of information contained in the pay slip) and the most serious offences (e.g. payment of wages in arrears), with the amount of fines rising in direct proportion to these categories.

<sup>38</sup> (1), s. 66. See also *Barbados* (1), ss. 15, 17(2), and *Dominica* (1), ss. 15, 17(2); (2), s. 9. In *Israel* (1), s. 26, the Wage Protection Act provides for a fine of a fixed amount only in the case that deducted amounts are not transmitted to the person to whom they are intended within 30 days. In *Croatia* (1), s. 228(1.2), (1.8), and *Japan* (2), s. 120(1), a fine within certain limits is provided for failure to duly inform the worker about the organization of the work before the commencement of employment or failure to include in a contract of employment all the information required by law.

<sup>39</sup> (1), s. 57(1). See also *Bahrain* (1), ss. 162, 165, and *Saudi Arabia* (1), ss. 121, 200, where a specific fine applies to any violation of the provisions on the protection of wages, with the exception of unjustifiable deductions or delayed payment, which carry a fine not exceeding double the amount deducted or double the outstanding wages.

<sup>40</sup> (5), s. 135(2); (1), s. 13.

<sup>41</sup> (1), s. 170.

<sup>42</sup> (1), s. 107. The situation is similar in the *Syrian Arab Republic* (1), s. 221, where the prescribed fine may be imposed as many times as there are workers in respect of whom the contravention was committed. See also *Tunisia* (1), ss. 234, 235, 237.

<sup>43</sup> (6), s. 17(1)(a). Such a penalty may be imposed within one year of the date on which the violation was committed and may be doubled in case of failure to take remedial action. See also *Poland* (1), ss. 282(1), 284(1), where labour inspectors are authorized to impose fines of an

authorized to impose fines up to a specified limit for violations of the provisions on wages. In *Turkey*,<sup>44</sup> an employer who deliberately fails to pay wages in full is liable to a fine of a specified amount, while increased fines are stipulated in case the employer fails to deliver the wage slip, or fines the worker for reasons other than those prescribed by law, or makes prohibited deductions. In *Sri Lanka*,<sup>45</sup> the legislation provides for a specific fine to be imposed in the case of first and second offences regarding the payment of wages, while sentences of imprisonment may also be pronounced for subsequent offences.

**474.** In other countries, the legislation prescribes penal sanctions. In *Mauritius*,<sup>46</sup> for instance, any person who fails or neglects to pay remuneration or to pay remuneration within the prescribed time, makes a false entry in a record required to be kept by an employer, produces a false remuneration sheet or record, or in any other manner contravenes the legislation regarding workers' remuneration, is liable to imprisonment for a term not exceeding one year and to a fine.

**475.** In many countries, pecuniary fines are provided for in the case of infringements of such legal requirements as the timely payment of wages, the prompt settlement of any outstanding payments in case of termination of employment, the regular provision of a wage statement at the time of each payment, the lawful operation of a company store or the proper keeping of a wage register, whereas violations regarding the means of payment, payment in kind and wage deductions are punished by heavier fines and/or imprisonment in case of repetition. This is the situation, for instance, in *Benin*,<sup>47</sup> *Burkina*

unspecified amount upon any person who fails to pay remuneration to an employee in due time, improperly reduces the amount of such remuneration or makes improper deductions.

<sup>44</sup> (1), s. 99. In *Algeria* (1), ss. 148, 150, 154, the heaviest fines are provided for those in breach of the requirement to keep books and registers, while lighter fines are stipulated for failure to pay remuneration on time or provide the worker with a pay slip. In *Viet Nam* (3), ss. 7(1), 8(3), the lowest pecuniary sanction is prescribed for breaches of provisions on the payment of wages directly, fully, in a timely manner and at the workplace, while a heavier fine is applied for failure to inform the worker about the reason for making a wage deduction or where wage deductions exceed the authorized limits.

<sup>45</sup> (1), ss. 52(1), 55; (2), ss. 4(1), 44(2), 58(d). However, any person who makes a false entry, or wilfully omits an entry, in any register, wage record or notice is liable to a fine or imprisonment or to both.

<sup>46</sup> (1), s. 55.

<sup>47</sup> (1), ss. 298, 300, 302, 303(g), 304. Financial sanctions are also prescribed in the event of an infringement of the provisions in respect of works stores, whereas financial sanctions and/or prison sentences are established for any person who asks workers for or accepts from them any remuneration whatsoever in order to act as an intermediary for the payment of wages, indemnities, allowances and expenses of any nature. This is also the case in *Chad* (1), ss. 288, 291; *Congo* (2), ss. 251(a), 255(a), (b), 257(a), (e), (g); *Gabon* (1), s. 195; *Madagascar* (1), ss. 189, 200(4), (5); *Mali* (1), ss. L.319, L.321, L.322; *Mauritania* (1), Bk. V, ss. 56(a), (g), 57, 64(a); *Niger* (1),

*Faso*,<sup>48</sup> *Cameroon*,<sup>49</sup> *Comoros*,<sup>50</sup> *Democratic Republic of the Congo*,<sup>51</sup> *Djibouti*,<sup>52</sup> and *Rwanda*.<sup>53</sup> In some cases, a prison sentence is obligatory in the event of a second recurrence of the offence. In this regard, repetition of the offence is deemed to occur if the person charged is sentenced for a similar offence at any time during a prescribed period, normally between 12 months and three years, preceding the offence giving rise to the current prosecution. Whenever a fine is imposed under the national laws and regulations referred to above, it is multiplied by the number of individual cases involved, provided that the total amount of the fines so imposed may not exceed a certain limit, which is often 50 times the maximum rates prescribed in the relevant provisions. In the *Dominican Republic*,<sup>54</sup> all offences relating to the protection of wages carry punishment in the form of fines, except for the non-payment or delayed payment of wages, which may be punished with imprisonment.

**476.** Furthermore, in Thailand,<sup>55</sup> an employer who fails to pay wages at the workplace is liable to a fine, whereas violations concerning untimely payment or unauthorized deductions may be punished with imprisonment of not more than six months, or a fine not exceeding a certain amount, or both. In *Botswana*,<sup>56</sup> the infringement of most provisions concerning the protection of

ss. 330(a), 331(a), 333(a), (g), 334; *Senegal* (1), s. L.279(a), (g); *Togo* (1), ss. 223(a), 227(a), 229(d), (f).

<sup>48</sup> (1), ss. 237(a), 238(a), (d), (e). In particular, persons infringing the legal prohibition against the sale of alcoholic drinks in company stores and in the workplace are liable to a fine and/or a prison sentence, which may be of up to three years.

<sup>49</sup> (1), ss. 168(1), (8), 170(1). Economic penalties are also provided for an employer who knowingly enters in the employer's register or other documents false statements concerning the workers' employment, and any worker who knowingly makes use of such false statements. See also *Kenya* (2), s. 25, and *United Kingdom: Isle of Man* (15), s. 26(2), (4).

<sup>50</sup> (1), ss. 230(a), 235(a), 237(a), (e), (f), 238. Among the most severely punished infringements are those related to the payment of wages, in whole or in part, in the form of alcohol or alcoholic drinks and the acceptance of any payment made by a worker to an employer or an intermediary for the settlement or payment of wages, benefits and costs of all kinds.

<sup>51</sup> (1), ss. 293(a), 294(a). Specific fines are laid down for contravening the maximum limits for the attachment of wages and for non-observance of the authorization procedure for the opening of a company store.

<sup>52</sup> (1), ss. 221(a), 226(a), 228(a), (e), (g). Persons infringing the formal prohibition upon paying wages in the form of alcohol, contravening the provisions on authorized wage deductions or receiving unlawful payments from the worker for acting as intermediaries in the settlement or payment of wages are subject to the highest fines and/or prison sentences.

<sup>53</sup> (1), ss. 179, 180.

<sup>54</sup> (1), ss. 211, 720(2), 721(2); (5), s. 401.

<sup>55</sup> (1), ss. 144, 149.

<sup>56</sup> (1), ss. 77(2), 78(2), 79(2), 80(2), 84(2), 86(2), 87(2), 93(2), 172(c), (d). A stricter penalty is only provided for unauthorized deductions from workers' wages, while lighter penalties are

wages is punishable with a fine not exceeding a specific amount, or by imprisonment for a term not exceeding 12 months, or both. Similarly, in *Swaziland*,<sup>57</sup> all violations of the legislative requirements with regard to the protection of wages are punishable with the same penalty, which may be a fine not exceeding a fixed amount, or a prison sentence not exceeding three years, or both.

477. Mention should be made of those States which, when faced with extraordinary problems of accumulated wage arrears, enacted specific legislation to address the issue of the penal liability of those contravening the legal provisions on the regular payment of wages. For example, in the *Russian Federation*,<sup>58</sup> a new provision was inserted into the Penal Code stipulating that the non-payment for more than two months of wages, grants, allowances and other payments established by law by the head of an enterprise is punishable by a fine to the amount of 100 to 200 minimum monthly wages, or by deprivation of the right to occupy certain positions or to conduct certain activities for a period of up to five years, or by imprisonment for a period of up to two years. Similar amendments were recently introduced in the Penal Code of *Ukraine*,<sup>59</sup> which now provides that the intentional non-observance by a manager of an enterprise of the periods fixed for the payment of labour remuneration, or the misuse of resources earmarked for the payment of such remuneration carries a sentence of from one to three years' imprisonment or a fine of up to 300 times the non-taxable minimum income, which may be combined with deprivation of the right to hold certain posts or to engage in certain types of activity for up to three years. In contrast, in other countries, this type of offence gives rise to only pecuniary and administrative sanctions. In the *Republic of Moldova*,<sup>60</sup> for instance, the deliberate violation of the time limits fixed for the payment of wages carries a fine of up to 15 times the minimum wage, while senior officials of the administration, enterprise or institution who are found guilty of violations of the legislation in respect of the payment of wages incur administrative liability and may be relieved of their duties.

envisaged for the payment of wages in unauthorized places and infringements relating to the keeping of records, books and accounts.

<sup>57</sup> (1), s. 64; (2), s. 8. See also *Uganda* (1), s. 62(1), (2), where the prison sentence may not exceed three months, and *Zambia* (1), s. 77. In the *Philippines* (1), s. 288, any violation of the provisions regarding the payment of wages is punished with a fine within specific limits or imprisonment of not less than three months or more than three years, or both at the discretion of the court.

<sup>58</sup> (4), s. 1; (1), s. 142.

<sup>59</sup> (5), s. 1; (2), s. 36.

<sup>60</sup> (5), s. 41-2; (1), s. 102-1.

**478.** Many States establish sanctions in the event of infringements of the labour legislation in general, without specific reference to the provisions concerning the protection of wages, although it is understood that they cover the latter. This is the case, for instance, in *Azerbaijan*,<sup>61</sup> *Belarus*<sup>62</sup> and *Kyrgyzstan*<sup>63</sup> where, according to national legislation, employers and employees are subject to disciplinary, administrative and criminal sanctions for violating legal rights as defined by the Labour Code, for abusing these rights or for failure to meet any commitments or obligations under an employment contract. Similarly, in *Bulgaria*,<sup>64</sup> an employer who violates provisions of the labour legislation, unless otherwise liable to a heavier sanction, is subject to a fine of from 250 to 1,000 levas, while in *Sudan*<sup>65</sup> the violation or refusal to apply any provision of the Labour Code is punishable with imprisonment for a period not exceeding six months or a fine, or both. In *Bolivia*,<sup>66</sup> *Colombia*,<sup>67</sup> *Costa Rica*,<sup>68</sup> *Guatemala*<sup>69</sup> and *Honduras*,<sup>70</sup> infringements of any provision of the Labour Code are punishable with fines. Similarly, in Qatar,<sup>71</sup> the law prescribes the minimum fine which may be imposed upon any person violating its provisions.

**479.** On various occasions, the Committee has addressed comments to governments drawing their attention to the need to adopt the necessary measures to establish appropriate sanctions for violations of the legislation on wage protection and to provide all relevant information. In the light of the information reviewed above, the Committee wishes to recall that, under the terms of the Convention, national laws or regulations must stipulate effective sanctions or

<sup>61</sup> (1), ss. 311, 312, 313.

<sup>62</sup> (1), s. 465; (6), s. 4.

<sup>63</sup> (1), s. 460.

<sup>64</sup> (1), s. 414(1).

<sup>65</sup> (1), s. 126(2).

<sup>66</sup> (1), s. 121; (2), s. 165.

<sup>67</sup> (1), s. 486(2).

<sup>68</sup> (1), ss. 165, 608 to 617.

<sup>69</sup> (2), ss. 269 to 271.

<sup>70</sup> (2), s. 625.

<sup>71</sup> (1), s. 75. Any violation of the provisions of the Labour Code and its implementing regulations is also punishable by a fine in Kuwait (1), s. 97.

other appropriate remedies for any violation of the provisions giving effect to the Convention, and not only for specific offences concerning the payment of wages.

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**480.** By way of conclusion, the Committee wishes to emphasize the importance of proper enforcement action in ensuring the application of the Convention in practice. In accordance with Article 15 of the Convention, there are two main parameters in addressing the question of enforcement: first, there is a need for institutional machinery, whether the labour inspectorate or otherwise, to exercise oversight and control, investigate and report on cases of non-compliance, as well as order and monitor the application of corrective measures. Secondly, each and every infringement of binding rules and regulations dealing with the protection of wages must be sanctioned in a manner that is proportionate to the seriousness of the violation, and sufficiently strict to prevent repetition. While the Convention leaves it to national authorities to decide whether wage-related offences should incur civil rather than penal liability, or both, and also to determine the scale of the prescribed sanctions, strict enforcement remains of the essence since it would be extremely prejudicial for any system of labour relations to allow abuses in respect of workers' wages to be committed with impunity. In this respect, the Committee notes that national laws often provide for penalties for selected offences respecting the payment of wages, probably those considered as the most reprehensible, but rarely for every infringement of the laws giving effect to all the relevant provisions of the Convention. The Committee therefore urges member States to adopt such enforcement measures as may be appropriate and are consistent with the requirements of Article 15 of the Convention, to ensure that any contravention of the substantive rules laid down in the Convention, whether they relate to the means of payment, the payment at regular intervals, the amount of deductions effected, the conditions of operation of a works store, or to the mere delivery of a pay slip, bear concrete legal consequences.

**481.** On another point, the Committee expresses its great disappointment that a large number of countries fail quasi-systematically from providing any information on the application of the Convention in practice. The Committee recalls in this connection that, according to established procedures, governments of ratifying States are requested to provide a regular account of the methods of supervision and enforcement of the national legislation and administrative regulations, including information on the organization and working of inspection, and also to furnish a general appreciation of the manner in which the Convention is applied in practice, along the lines suggested in Parts III and V of the report form on the application of the Convention. This report form, which has been approved by the ILO Governing Body, is the main channel through

which the Committee receives official information enabling it to follow the evolution of national laws and practice in the matters covered by the Convention. The Committee therefore reminds ratifying States that they are obliged to supply up-to-date information regularly on all aspects of the enforcement of the laws and regulations giving effect to the Convention, including, for instance, extracts from official reports, the results of inspection visits, and statistics on penalties imposed for breach of wage protection standards.



## CHAPTER IX

### FINAL OBSERVATIONS

**482.** In this last chapter, the system of protection of wages as enshrined in [Conventions Nos. 95](#) and [173](#) with the corresponding Recommendations is reviewed from the standpoint of problems or difficulties which their implementation in national laws and their practical application pose to some countries and which therefore inhibit or impede their ratification. The chapter follows this up with some concluding remarks highlighting more specifically and directly the importance of the system of protection, the extent of the obligations created by the instruments, the continued relevance of the system, its inadequacies and shortcomings.

#### **Difficulties of application**

**483.** The Committee notes that most governments have stated that no difficulties are encountered in the implementation of the instruments under review in national law and practice. Among the few reports received in which mention was made of specific problems related to the application of the Convention, the Government of Australia reported that for certain states and territories, such as Western Australia and Tasmania, the impediments to ratifying the Convention arise because there are few legislative provisions dealing explicitly with the subject covered by the Convention. More specifically, the Government of Australia has stated that in these two states there is no legislation ensuring that works stores operated by the employer are not operated for profit, requiring the payment of wages on working days at or near the workplace or providing for the payment of wages in hard currency only. Moreover, the Government of Australia has reported that, in the case of the Northern Territory, the payment of wages by electronic fund transfer (EFT) and by cheque, which does not appear to be consistent with Article 3 of the Convention, is common practice and therefore represents a further obstacle to ratification.

**484.** The Government of Japan has stated that, while the provisions of the Convention are for the most part given effect to by national labour laws, certain differences exist, particularly as regards the requirements of the Convention concerning the partial payment of wages in kind, the prohibition of payment in the form of alcoholic drinks and the prohibition of payment in certain places. For

the Government of Namibia, the requirement of the Convention that wages be paid only in legal tender and not in promissory notes, vouchers or coupons is not reflected in the national legislation and therefore constitutes an obstacle to ratification.

**485.** A certain number of workers' and employers' organizations made comments concerning the difficulties experienced in the practical application of the Convention. Some of these comments relate to persistent problems of the deferred payment of wages. For instance, the Federation of Trade Unions of Belarus stated that over the period from September 2001 to May 2002, wage arrears amounted to 7.5 per cent of the country's total wage bill in September 2001, 13.9 per cent in April 2002 and 11.5 per cent in May 2002. Similarly, according to information supplied by the Federation of Trade Unions of Ukraine, some 2.7 million workers are still affected by arrears, with 32.9 per cent of them experiencing delays in the payment of wages in excess of six months. The Confederation of Employers of Ukraine noted that the wage arrears decreased in 2001-02 by 42 per cent in state-owned enterprises and by 54 per cent in the private sector, and has requested the Office to consider the possibility of providing technical assistance and advice on experience of other countries in this matter.

**486.** The Viet Nam Chamber of Commerce and Industry (VCCI) observed that, although the national legislation is relatively consistent with the requirements of the Convention, there is a lack of information and the penalties prescribed by law for those who violate salary regulations are not being applied. At another level, the Austrian Federal Chamber of Labour (BAK) reported that, despite the existence of appropriate judicial machinery, significant difficulties regularly arise under the prevailing rules concerning the burden of proof in connection with claims such as remuneration for overtime and additional hours worked, which are often very difficult to assert.

**487.** Two organizations referred to the wage conditions of workers employed in export processing zones (EPZs). The Confederation of Free Trade Unions of Cape Verde (CCSL) expressed the view that the ratification of [Convention No. 95](#) would be advisable since the wage protection situation in Cape Verde urgently requires the adoption of legal and judicial measures better adapted to current realities. By way of example, the CCSL reported that since May 1994 workers employed in enterprises in EPZs have been excluded from the scope of all legal instruments pertaining to the protection of wages. The precarious conditions of employment of workers in EPZs are also alluded to in the observations of the Federation of Progressive Unions of Mauritius. According to the latter organization, workers employed in the EPZ sector can be dismissed without any notification, as the relevant section of the Labour Act on the "reduction of the workforce" is not applicable to workers in EPZs.

Moreover, in the event of dismissal, such workers are frequently not even paid the wages due.

**488.** Finally, one organization referred to the deterioration of national conditions relating to the protection of wages as a result of structural economic reforms. Indeed, the New Zealand Council of Trade Unions (NZCTU) stated that the collapse of the award system, the development of sweatshops and other labour market practices during the period of structural economic reform have had a definite impact on national practice in respect of wage protection.

### Prospects for ratification

**489.** In their replies, governments expressed different views as to whether they intend to take any steps for the ratification of the Convention in the immediate future. The Government of Finland, for instance, reported that the ratification of [Convention No. 95](#) is under consideration as part of an overall examination of the prerequisites for the ratification of all the ILO Conventions that the country has not yet ratified. The Government of Kuwait stated that it is currently giving careful consideration to the possibility of formally accepting the Convention, without however indicating a time frame. The Government of Seychelles reported that it may consider ratifying the Convention in the future as it believes that it would not encounter any practical difficulties in applying its provisions, while the Government of Viet Nam stated that ratification required consideration by the competent authorities and might occur at an appropriate time.

**490.** On the other hand, the Governments of Denmark and Sweden reported that [Convention No. 95](#) and [Recommendation No. 85](#) are considered as partly addressing phenomena which are irrelevant to the present-day conditions in the Danish and Swedish labour markets and that Convention No. 95 should not therefore be ratified. Several Swedish employers' and workers' organizations have concurred with the Government's view, stating that there is no reason to ratify Convention No. 95, which would amount to abandoning the long-standing tradition of regulating matters such as the form and manner of the payment of wages and the conditions and limits of wage deductions, exclusively through collective agreements or individual contracts.<sup>1</sup> Similarly, the Governments of Kenya, Luxembourg, Singapore and Thailand reported that they are not considering ratifying the Convention for the time being.

<sup>1</sup> Swedish Agency for Government Employers; Confederation of Swedish Enterprise; Swedish Association of Local Authorities; Swedish Confederation of Professional Associations (SACO); Swedish Federation of County Councils; Swedish Confederation of Trade Unions.

**491.** As regards the reasons invoked for not considering ratification, the Government of Germany stated that it is not possible to ratify the Convention in view of Article 7, paragraph 2, of the Convention since there is no legal basis in German law which could force or even encourage employers to operate services for the benefit of the workers on a non-profit basis. The Government of the United Arab Emirates reported that the main obstacle to ratification is the inadequate administrative infrastructure, as a possible ratification would risk overstressing the limited capacity of the existing labour administration services. The Government of China indicated that there is still some gap between national law and practice and the provisions of the Convention. Furthermore, the Government of Indonesia stated that ratification has not so far been possible as focus has primarily been placed on the application of the ILO core Conventions that have been ratified, while the Government of New Zealand indicated that the ratification of the Convention is not among its current priorities.

**492.** The Committee notes that some governments provided information on the possibility in the near future of ratifying [Convention No. 173](#), which revises partially [Convention No. 95](#) and contains improved standards on the protection of workers' wage claims in the event of the employer's insolvency. The Government of *Bulgaria* reported that it is currently working on preparing the ratification of Convention No. 173 and the elaboration of implementing legislation, with the assistance of the ILO Office in Budapest. The Government of the *Syrian Arab Republic* reported that, by decision of June 2001, the Council of Ministers decided to submit Convention No. 173 to the National Assembly for ratification. The Government of Zimbabwe announced its intention of ratifying Convention No. 173 in light of the recent amendment introduced to the Insolvency Act. The Government of *Belgium* stated that it anticipates no difficulties in ratifying Convention No. 173. Similarly, the Government of Lithuania reported that, as the national legislation is in the process of being aligned with European Union law, taking into account ILO Conventions and Recommendations, no difficulties are foreseen in ratifying this Convention. In addition, the Government of Luxembourg indicated that Convention No. 173 could be ratified in the context of the measures taken for the implementation of the new Directive 2002/74/EC of the European Parliament and the Council relating to the protection of employees in the event of the insolvency of their employer.

**493.** A number of governments acknowledged the importance of the provisions of [Convention No. 173](#), but refrained from stating clearly their intentions as to the formal acceptance of that instrument. For example, the Government of Croatia reported that it is currently planning the adoption of special regulations governing the issue of the protection of workers' claims in the event of the employer's insolvency, without specifying whether the ratification of Convention No. 173 is also envisaged. Similarly, the Government of *Honduras* stated that it attaches great importance to the ratification of

[Convention No. 173](#), while the Government of Jordan indicated that the provisions of the Convention will be taken into consideration in any modifications that might be introduced to the relevant legislation in the future. The Government of Seychelles indicated that, after consultation with the social partners and other stakeholders, it may consider ratification of the Convention.

**494.** On the other hand, the Governments of *Benin*, *Ecuador*, Estonia, *Malaysia*, Namibia, Rwanda and the United Kingdom informed the Committee that the ratification of [Convention No. 173](#) is not envisaged at the present time. Similarly, the Government of *Brazil* reported that no steps are being taken for the ratification of that Convention, while the Government of *Nicaragua* stated that no decision has yet been taken in this respect.

**495.** The Committee hopes, in view of the fundamental nature of the principles and rights set out in the Protection of Wages Convention, 1949 ([No. 95](#)), that governments which are not as yet bound by its terms will give due consideration to the possibility of formally accepting this instrument. It also hopes that a growing number of States will consider favourably the ratification of the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 ([No. 173](#)), in the coming years and recalls that member States may request the Office's technical and advisory services in this regard.

### Concluding remarks

**496.** Labour legislation is in general developed around the question of wages. Wages are in the epicentre of labour relations, whether individual or collective; the principal aim of collective bargaining is to fix mutually acceptable wage rates, while remuneration is one of the two constitutive elements of the bilateral relationship which is established by the employment contract. Even matters that appear somewhat unrelated at first sight, such as social security regimes or the regulation of working time, are ultimately connected in one way or another to the question of wages. The right to decent remuneration is a corollary to the right to work as enshrined in Article 23 of the Universal Declaration of Human Rights, which provides that "everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection".

**497.** The Committee welcomes the opportunity to examine for the first time the Protection of Wages Convention and Recommendation, and incidentally also the Protection of Workers' Claims (Employer's Insolvency) Convention, with a view to contributing to a better understanding of the issues and problems which arise under those instruments. It would be difficult to overestimate the importance of the Protection of Wages Convention. Apart from the eight Conventions on fundamental rights at work and two of the four priority

Conventions,<sup>2</sup> [Convention No. 95](#) is one of the most widely ratified ILO instruments, with a total number of 95 ratifications. This high number of ratifications is a clear reflection of the general level of acceptance of the principles embodied in the Convention. However, nearly half of the member States have not yet ratified it. The Governing Body confirmed in March 1998 that the Convention is up to date and that its ratification should be encouraged. Following this decision, the Committee has undertaken the present survey in order to comment on the precise extent of the obligations arising out of the Convention, assess its continued relevance and shed some light on certain aspects which may have so far impeded ratification.

**498.** Self-evidently, the Protection of Wages Convention does not focus on the determination of wage levels, the reduction of wage differentials or the promotion of equality of treatment. It does not regulate the systems of wage payment nor does it address other aspects of wages policy. [Convention No. 95](#) offers an anthology of long-standing principles and fair practices which should govern the process of labour remuneration in the course of the employment relationship. It could be said that the Convention states the obvious and that its relevance may therefore be diminishing in a context of economic development and social progress. Yet, unfortunately everyday life proves that the most elementary of the principles codified in the Convention are violated to varying degrees and in different forms in certain countries. It is distressing that the phenomena of deferred payment of wages and illegal practices of wage payment in the form of vouchers or coupons have persisted in recent years in various parts of the world and have in many cases attained alarming proportions.

**499.** Turning to the application of the protection of wages instruments as a whole, the Committee is in a position to affirm that practically the totality of their provisions are given effect in the law and practice of the overwhelming majority of States. Whether it is the obligation to pay wages in legal tender, the requirement for the direct and regular payment of wages or the need to keep workers informed of their wage conditions, the principles set out in the Convention and the corresponding Recommendation appear to have attained almost universal acceptance.

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<sup>2</sup> The eight Conventions on fundamental rights at work are: Freedom of Association and Protection of the Right to Organise Convention, 1948 ([No. 87](#)); Right to Organise and Collective Bargaining Convention, 1949 ([No. 98](#)); Forced Labour Convention, 1930 ([No. 29](#)); Abolition of Forced Labour Convention, 1957 ([No. 105](#)); Equal Remuneration Convention, 1951 ([No. 100](#)); Discrimination (Employment and Occupation) Convention, 1958 ([No. 111](#)); Minimum Age Convention, 1973 ([No. 138](#)); Worst Forms of Child Labour Convention, 1999 ([No. 182](#)).

The four priority Conventions are: Employment Policy Convention, 1964 ([No. 122](#)); Labour Inspection Convention, 1947 ([No. 81](#)); Labour Inspection (Agriculture) Convention, 1969 ([No. 129](#)); Tripartite Consultation (International Labour Standards) Convention, 1976 ([No. 144](#)).

**500.** *Legal tender: Paying wages in money, not worthless IOUs.* The legal obligation to pay remuneration in lawful money and the corresponding prohibition of the use of coupons, vouchers or similar surrogates for money is the quintessence of wage protection. Yet phenomena such as the use of promissory notes to settle wage debts, and even the use of local government bonds in place of national currency still occur, which proves that the principle enunciated in Article 3, paragraph 1, of the Convention retains all its relevance at both the legal and practical levels.

**501.** *Cashless methods of the payment of wages: Are bank transfers permissible?* As discussed in paragraph 84, payment of wages by electronic bank transfer is compatible with the letter and spirit of the Convention so long as there is compliance with Articles 5 and 10. The Office has given a number of informal opinions to similar effect which have been sufficiently publicized, and the Committee has never raised the question in its comments of the payment of wages by bank transfer being inconsistent with the Convention. When the issue arose recently in the context of discussions of the Working Party on Policy regarding the Revision of Standards, the same overall conclusion was reached. Therefore, no problem of incompatibility may be feared by reason of such form of payment alone.

**502.** *Payment of wages in kind: From spirits to stock options.* Some 50 years after the adoption of the Convention, its carefully worded provisions on the payment of wages in kind remain of unflinching relevance. The application of Article 4 of the Convention has over the years occasioned by far the highest number of comments by the Committee. Laws still exist in many countries which tolerate the payment of wages in their entirety in kind, practices consisting of the payment of wages in the form of spirits occasionally come to light, safeguards are not always in place to ensure that goods and services offered in lieu of money wage are appropriate for the worker's household and fairly valued, and arrangements for the payment of wages in kind continue at times to be the subject of individual agreements and not the result of collective bargaining. Moreover, the extensive use of "barter" in cases of liquidity problems and wage arrears has revealed an even more worrying dimension to the risks involved in the payment of wages in kind when this issue is left unregulated. The Committee considers that the payment of wages in kind still represents a potential source of abuse of the wage rights of workers and that the Convention affords a very satisfactory level of protection in this respect.

**503.** One of the aspects that the Committee has not had the opportunity to examine in any length, as it is not directly addressed in the Convention or specifically referred to in the report form, is the question of "wage packaging", and in particular the modern forms of remuneration, such as profit-sharing and stock options. Recent experience has shown that these new forms of remuneration may benefit employees but may also carry great risks, sometimes

with extremely serious consequences. The Committee is of the view that this is an area in which further study is needed, since the legal framework provided by the Convention is clearly not suited to the regulation of such practices. The Office may wish to propose a number of initiatives to the Governing Body in this regard, as the basis for studying whether a new regulatory approach with a view to achieving a viable balance between income security and speculative forms of remuneration should be developed.

**504.** *Deductions from wages and the attachment and assignment of wages: The need for clear rules and reasonable limits.* As a framework instrument, the Convention does not seek to regulate the specific conditions under which employers may retain part of the wages owed to employees. It only requires that such conditions be clearly prescribed in national laws and regulations or fixed by collective agreement and, in any event, not left to the free will of the parties. Deductions also have to be kept within limits which permit the worker and his/her family to live decently with the remaining resources. It may be regretted that the Convention refrains from prohibiting certain forms of deductions, such as disciplinary fines, which are in any case relatively uncommon in member States. However, deductions in the form of fines are not explicitly provided for in either the Convention or the Recommendation. The emerging trend in member States to eliminate wage deductions in the form of disciplinary fines is therefore not in conflict with the content of the Convention since the Convention is silent on the point.

**505.** *Wage protection and insolvency regime: Solid standards, interesting innovations.* Analysis of national law and practice shows that the preferential treatment of workers' claims in bankruptcy proceedings forms an integral part of the bankruptcy legislation in almost every country. The Committee also notes that in many cases national laws have been amended, or are in the process of being amended, to grant workers' wage claims a higher ranking than all other privileged debts, particularly taxes and other claims by the State. In a globalized economy, phenomena such as corporate bankruptcies, company closures and cessation of payments are bound to rise. At the same time, there are those who argue in favour of the elimination of most statutory priorities in bankruptcy or insolvency laws. Under these conditions, the Committee considers it essential to reaffirm the principle of the privileged protection of workers' wage claims in the event of the insolvency of their employer. The process of making insolvency laws more effective should in no event result in such laws becoming socially insensitive. The designation of employees' wages and entitlements as a preferential debt is a keystone of labour legislation in practically every nation and the Committee would firmly advise against any attempt to question such a principle without proposing in its place an equally protective arrangement, such as a wage guarantee fund or an insurance scheme providing a separate source of assets to ensure the settlement of employees' claims.



**506.** While noting that over the past two years the Office has been requested by certain member States to offer technical advice and assistance in relation to [Convention No. 173](#), and that as a result a number of member States may now be prepared to formally accept that instrument, the Committee requests the Office to maintain its efforts to actively promote Convention No. 173. The Committee has reason to believe that member States are not fully aware of the wide range of options for ratification offered by that instrument, possibly because of its atypical structure, and that a proper information campaign would certainly enhance the prospects of its ratification in the near future.

**507. Wage arrears: Difficulties and dilemmas.** As discussed at some length in [Chapter VI](#) above, the disturbing practice of the deferred payment of wages has for some years been affecting a number of countries, especially in Central and Eastern Europe, sub-Saharan Africa and Latin America, and consequently a considerable number of employees. The deleterious effect of this practice on the life of employees must be emphasized yet again, particularly as regards certain States who defer the payment of the remuneration of public servants even though their resources, which they direct towards other uses, would permit their payment: they thereby deliberately choose to place themselves in contradiction with their obligations under the Convention. Their attitude must be severely criticized, as the Committee has already had occasion to do. Moreover, as emphasized above, there are enterprises which take the decision to apply for other purposes funds which should have been used for the payment of their employees' wages. It is not admissible in such cases for States, through their supervisory services, to fail to take vigorous and effective action so as to comply with the Convention and put an end to such blatant abuse. In this respect, the Convention has been instrumental in drawing attention to the wage debt crises in various parts of the world and keeping them under the close scrutiny of the ILO's supervisory bodies. In case there should be any doubt as to the utility of ILO standards, the Committee wishes to recall that, had there be no instrument requiring the regular payment of wages, it would not have been possible for workers' organizations to lodge more than a dozen representations under article 24 of the ILO Constitution over the past 15 years thereby drawing attention at the international level to the serious problems of the deferred payment of wages. The Convention does not, of course, offer ready-made remedies to such systemic failures. It only serves as a reminder of the special nature of wages as the workers' principal, if not sole, means of subsistence, which implies that the regular payment of wages cannot be subjected to the logic of accounting practices and assumes a great significance in its own right. The discussion concerning the periodicity of wage payment also gives the Committee the opportunity to emphasize the crucial role of strict enforcement above and beyond mere legislative conformity, and the need for sustained government action and open social dialogue. Moreover, the Committee cautions against recourse to unrestrained payment in kind or the use of money surrogates, such as

bonds and vouchers, as a solution to problems of cash shortages and accumulated wage arrears.

**508.** *Keeping workers informed: The need for transparency and certainty.* Another of the long-standing principles laid down in the Convention is the obligation of employers to keep workers informed of the wage conditions applicable during the employment relationship. The rationale is of course that the worker should put his/her labour at the service of the employer in full cognizance of the exact conditions, form and amount of payment that he/she expects to receive in return. Workers must be given advance notice of pay intervals, the place and manner of payment, and the conditions and limits of any wage deductions at the time of recruitment, as well as when any change occurs. The Committee's review of national law and practice has clearly established that the provision of itemized wage statements and the maintenance of payroll records are today common practice in most countries.

**509.** *Requirements relating to the time and place of payment: Not as antiquated as they may appear.* At a time when the payment of wages by direct bank transfer is becoming increasingly common, some governments have expressed the view that the requirement for payment at or near the workplace and during working hours may seem somewhat arcane. However, it should not be forgotten that payment by bank transfer is unknown to millions of workers around the world, especially rural workers. Moreover, the prohibition of the payment of wages in places where alcohol is consumed or places of amusement could appear to some to reflect a completely outdated sense of social protection. Yet the management of alcohol-related issues remains extremely topical in most countries. It should be pointed out that the drafters of the Convention wisely provided for the possibility of other arrangements being made in collective agreements or agreed upon between the employer and the worker. The Committee therefore considers that, even though the provision of the Convention relating to the time and place of payment may appear to some to bear little relation with modern labour realities, it is worded in flexible terms and can hardly therefore be considered as diminishing the continued relevance of the Convention as a whole.

**510.** *Means of application: Practice or enactment of laws?* On several occasions, the question has been raised as to whether the application of the Convention through current practice or usage is sufficient, or whether precise legislative provisions are necessary. The Committee points out in this respect that the provisions of the Convention are worded in varying forms; some require specific practices to be prohibited, and thus appear to require legislative provisions to this effect, while others merely require certain practices to be followed, and thus seem to leave scope for implementation by various means, including custom or practice. In this latter case, the responsibility rests upon the public authorities to keep themselves informed of the situation and, if necessary,

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to take further measures to secure the observance of the provisions in question. Yet other provisions permit certain matters to be regulated by collective agreement, arbitration award or even by agreement between the employer and the worker, or leave it to the discretion of the competent authorities to decide on the need for and the form of any action on their part. Notwithstanding the above, the Committee emphasizes that the mere fact that certain procedures or practices may have not given rise to complaints, or that certain practices which have to be controlled under the terms of the Convention do not exist or are unlikely to occur in some countries, does not absolve the governments of those countries from their obligation to give specific legislative expression to the standards set out in the Convention. In this regard, the role of the workers' and employers' organizations in applying in practice the principles and guidelines set out in the Convention, and thereby complementing and reinforcing the legislative provisions, needs to be emphasized.

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**511.** In the light of the above, the Committee views the Protection of Wages Convention as a “fundamental” Convention in the commonly accepted sense of the term, as it affords protection in an area that impinges closely on the rights set forth in the eight ILO Conventions that are officially designated as being “fundamental”. The Committee therefore urges those member States which have not yet ratified it to consider the possibility of formally accepting this instrument in the very near future.

## APPENDIX I

### TABLE OF REPORTS DUE AND RECEIVED ON THE INSTRUMENTS UNDER CONSIDERATION AND LIST OF RATIFICATIONS/DENUNCIATIONS BY CONVENTION AND COUNTRY (AS AT 13 DECEMBER 2002)

Article 19 of the Constitution of the International Labour Organization provides that Members shall “report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body” on the position of their law and practice in regard to the matters dealt with in unratified Conventions and Recommendations. The obligations of Members as regards Conventions are laid down in paragraph 5(e) of the abovementioned article. Paragraph 6(d) deals with Recommendations, and paragraph 7(a) and (b) deals with the particular obligations of federal States. Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 19, and that each Member shall communicate copies of these reports to the representative organizations of employers and workers.

At its 218th (November 1981) Session, the Governing Body decided to discontinue the publication of summaries of reports on unratified Conventions and on Recommendations and to publish only a list of reports received, on the understanding that the Director-General would make available for consultation at the Conference the originals of all reports received and that copies of reports would be available to members of delegations on request.

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification.

From now on, reports received under article 19 of the Constitution appear in simplified form in a table annexed to Report III (Part 1B) of the Committee of Experts on the Application of Conventions and Recommendations.

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

The reports, which are listed below, refer to the Protection of Wages Convention (No. 95) and Recommendation (No. 85), 1949.

Member States	Convention No. 95	Recommendation No. 85
Afghanistan	<i>Ratified, 7.01.1957</i>	–
Albania	<i>Ratified, 2.08.2001</i>	–
Algeria	<i>Ratified, 19.10.1962</i>	Received
Angola	–	–
Antigua and Barbuda	–	–
Argentina	<i>Ratified, 24.09.1956</i>	–
Armenia	–	–
Australia <i>Ratified C.173 (Part II), 8.06.1994</i>	Received	Received
Austria <i>Ratified C.173 (Part III), 20.12.1996</i>	<i>Ratified, 10.11.1951</i>	Received
Azerbaijan	<i>Ratified, 19.05.1992</i>	Received
Bahamas	<i>Ratified, 25.05.1976</i>	–
Bahrain	Received	Received
Bangladesh	–	–
Barbados	<i>Ratified, 8.05.1967</i>	–
Belarus	<i>Ratified, 4.08.1961</i>	Received
Belgium	<i>Ratified, 22.04.1970</i>	Received
Belize	<i>Ratified, 15.12.1983</i>	–
Benin	<i>Ratified, 12.12.1960</i>	Received
Bolivia	<i>Ratified, 31.01.1977</i>	–
Bosnia and Herzegovina	–	–
Botswana <i>Ratified C.173 (Part II), 5.06.1997</i>	<i>Ratified, 5.06.1997</i>	–
Brazil	<i>Ratified, 25.04.1957</i>	Received
Bulgaria	<i>Ratified, 7.11.1955</i>	Received
Burkina Faso <i>Ratified C.173 (Part II), 11.02.1999</i>	<i>Ratified, 21.11.1960</i>	Received
Burundi	–	–
Cambodia	–	–
Cameroon	<i>Ratified, 7.06.1960</i>	–
Canada	Received	Received
Cape Verde	–	–
Central African Republic	<i>Ratified, 27.10.1960</i>	–
Chad <i>Ratified C.173 (Part II), 15.12.2000</i>	<i>Ratified, 10.11.1960</i>	–
Chile	Received	Received
China	Received	Received

Member States	Convention No. 95	Recommendation No. 85
Colombia	<i>Ratified, 7.06.1963</i>	Received
Comoros	<i>Ratified, 23.10.1978</i>	–
Congo	<i>Ratified, 10.11.1960</i>	–
Costa Rica	<i>Ratified, 2.06.1960</i>	Received
Côte d'Ivoire	<i>Ratified, 21.11.1960</i>	Received
Croatia	Received	Received
Cuba	<i>Ratified, 29.04.1952</i>	Received
Cyprus	<i>Ratified, 23.09.1960</i>	Received
Czech Republic	<i>Ratified, 1.01.1993</i>	Received
Democratic Republic of the Congo	<i>Ratified, 16.06.1969</i>	–
Denmark	Received	Received
Djibouti	<i>Ratified, 3.08.1978</i>	–
Dominica	<i>Ratified, 28.02.1983</i>	Received
Dominican Republic	<i>Ratified, 19.06.1973</i>	–
Ecuador	<i>Ratified, 6.07.1954</i>	Received
Egypt	<i>Ratified, 26.07.1960</i>	Received
El Salvador	Received	Received
Equatorial Guinea	–	–
Eritrea	–	–
Estonia	Received	Received
Ethiopia	Received	Received
Fiji	–	–
Finland <i>Ratified C.173 (Part III), 20.06.1994</i>	Received	Received
France	<i>Ratified, 15.10.1952</i>	Received
Gabon	<i>Ratified, 14.10.1960</i>	–
Gambia	–	–
Georgia	–	–
Germany	Received	Received
Ghana	Received	Received
Greece	<i>Ratified, 16.06.1955</i>	Received
Grenada	<i>Ratified, 9.07.1979</i>	–
Guatemala	<i>Ratified, 13.02.1952</i>	Received
Guinea	<i>Ratified, 21.01.1959</i>	–
Guinea-Bissau	Received	Received
Guyana	<i>Ratified, 8.06.1966</i>	–
Haiti	–	–
Honduras	<i>Ratified, 20.06.1960</i>	Received

Member States	Convention No. 95	Recommendation No. 85
Hungary	<i>Ratified, 8.06.1956</i>	Received
Iceland	–	–
India	Received	Received
Indonesia	Received	Received
Islamic Republic of Iran	<i>Ratified, 10.06.1972</i>	Received
Iraq	<i>Ratified, 12.05.1960</i>	–
Ireland	–	–
Israel	<i>Ratified, 12.01.1959</i>	Received
Italy	<i>Ratified, 22.10.1952</i>	Received
Jamaica	–	–
Japan	Received	Received
Jordan	Received	Received
Kazakhstan	–	–
Kenya	Received	Received
Kiribati	–	–
Republic of Korea	Received	Received
Kuwait	Received	Received
Kyrgyzstan	<i>Ratified, 31.03.1992</i>	–
Lao People's Democratic Republic	–	–
Latvia	–	–
Lebanon	<i>Ratified, 1.06.1977</i>	Received
Lesotho	–	–
Liberia	–	–
Libyan Arab Jamahiriya	<i>Ratified, 20.06.1962</i>	Received
Lithuania <i>Ratified C.173 (Part II), 26.09.1994</i>	Received	Received
Luxembourg	Received	Received
Madagascar <i>Ratified C.173 (Part II), 3.06.1998</i>	<i>Ratified, 1.11.1960</i>	–
Malawi	–	–
Malaysia	<i>Ratified, 17.11.1961</i>	Received
Mali	<i>Ratified, 22.09.1960</i>	–
Malta	<i>Ratified, 4.01.1965</i>	Received
Mauritania	<i>Ratified, 20.06.1961</i>	–
Mauritius	<i>Ratified, 2.12.1969</i>	Received
Mexico <i>Ratified C.173 (Part II), 24.09.1993</i>	<i>Ratified, 27.09.1955</i>	Received
Republic of Moldova	<i>Ratified, 12.08.1996</i>	Received

Member States	Convention No. 95	Recommendation No. 85
Mongolia	–	–
Morocco	Received	Received
Mozambique	Received	Received
Myanmar	Received	Received
Namibia	Received	Received
Nepal	–	–
Netherlands	<i>Ratified, 20.05.1952</i>	–
New Zealand	Received	Received
Nicaragua	<i>Ratified, 1.03.1976</i>	Received
Niger	<i>Ratified, 27.02.1961</i>	–
Nigeria	<i>Ratified, 17.10.1960</i>	–
Norway	<i>Ratified, 29.06.1950</i>	Received
Oman	Received	Received
Pakistan	–	–
Panama	<i>Ratified, 19.06.1970</i>	Received
Papua New Guinea	–	–
Paraguay	<i>Ratified, 21.03.1966</i>	–
Peru	Received	Received
Philippines	<i>Ratified, 29.12.1953</i>	Received
Poland	<i>Ratified, 25.10.1954</i>	Received
Portugal	<i>Ratified, 24.02.1983</i>	Received
Qatar	Received	Received
Romania	<i>Ratified, 6.06.1973</i>	Received
Russian Federation	<i>Ratified, 4.05.1961</i>	–
Rwanda	Received	Received
Saint Kitts and Nevis	–	–
Saint Lucia	<i>Ratified, 14.05.1980</i>	–
Saint Vincent and the Grenadines	<i>Ratified, 21.10.1998</i>	–
San Marino	–	–
Sao Tome and Principe	–	–
Saudi Arabia	Received	Received
Senegal	<i>Ratified, 4.11.1960</i>	Received
Seychelles	Received	Received
Sierra Leone	<i>Ratified, 15.06.1961</i>	–
Singapore	Received	Received
Slovakia <i>Ratified C.173 (Part II), 24.09.1998</i>	<i>Ratified, 1.01.1993</i>	–



Member States	Convention No. 95	Recommendation No. 85
Slovenia <i>Ratified C. 173 (Part III), 8.05.2001</i>	Received	Received
Solomon Islands	<i>Ratified, 6.08.1985</i>	–
Somalia	<i>Ratified, 18.11.1960</i>	–
South Africa	–	–
Spain <i>Ratified C. 173 (Parts II and III), 16.05.1995</i>	<i>Ratified, 24.06.1958</i>	Received
Sri Lanka	<i>Ratified, 27.10.1983</i>	Received
Sudan	<i>Ratified, 22.10.1970</i>	Received
Suriname	<i>Ratified, 15.06.1976</i>	Received
Swaziland	<i>Ratified, 26.04.1978</i>	–
Sweden	Received	Received
Switzerland <i>Ratified C. 173 (Parts II and III), 16.06.1995</i>	Received	Received
Syrian Arab Republic	<i>Ratified, 7.06.1957</i>	Received
Tajikistan	<i>Ratified, 26.11.1993</i>	–
United Republic of Tanzania	<i>Ratified, 30.01.1962</i>	–
Thailand	Received	Received
The former Yugoslav Republic of Macedonia	–	–
Togo	<i>Ratified, 7.06.1960</i>	–
Trinidad and Tobago	–	–
Tunisia	<i>Ratified, 28.05.1958</i>	Received
Turkey	<i>Ratified, 29.03.1961</i>	Received
Turkmenistan	–	–
Uganda	<i>Ratified, 4.06.1963</i>	–
Ukraine	<i>Ratified, 4.08.1961</i>	Received
United Arab Emirates	Received	Received
United Kingdom	<i>Denounced, 16.09.1983</i>	Received
United States	Received	Received
Uruguay	<i>Ratified, 18.03.1954</i>	Received
Uzbekistan	–	–
Venezuela	<i>Ratified, 10.08.1982</i>	Received
Viet Nam	Received	Received
Yemen	<i>Ratified, 14.04.1969</i>	–
Yugoslavia	–	–
Zambia <i>Ratified C. 173 (Part II), 25.05.1998</i>	<i>Ratified, 23.10.1979</i>	–
Zimbabwe	Received	Received

## APPENDIX II

### LEGISLATIVE TEXTS ON PROTECTION OF WAGES BY COUNTRY <sup>1</sup>

#### *Algeria*

1. Act No. 90-11 of 21 April 1990 respecting labour relations.
2. Executive Decree No. 96-98 of 6 March 1996 on the special books and registers which every employer must keep and their contents.
3. Executive Decree No. 97-473 of 8 December 1997 relating to part-time work.
4. Executive Decree No. 97-474 of 8 December 1997 on the specific system of employment relationships relating to home workers.
5. Ordinance No. 75-34 of 29 April 1975 respecting the attachment and assignment of remuneration.
6. Act No. 90-03 of 6 February 1990 relating to labour inspection.

#### *Argentina*

1. Act No. 20.744 of 13 May 1976 on labour contract, as amended to 2001.  
<http://infoleg.mecon.gov.ar/txtnorma/texactley20744.htm>
2. Decree No. 772/96 of 15 July 1996 to confer to the Ministry of Labour and Social Security nationwide powers of supervision and central authority.
3. Act No. 25.212 of 23 December 1999 to ratify the Federal Labour Pact.
4. Act No. 24.522 of 20 July 1995 on bankruptcy.  
<http://infoleg.mecon.gov.ar/txtnorma/texactley24522.htm>

#### Australia

##### Commonwealth legislation

1. Workplace Relations Act 1996.  
<http://scaletext.law.gov.au/html/pasteact/0/70/top.htm>
2. Workplace Relations Regulations 1996.
3. Bankruptcy Act 1966.
4. Corporations Act 2001.

<sup>1</sup> States bound by [Convention No. 95](#) are indicated in italics.

## State legislation

## New South Wales

5. Industrial Relations Act 1996.  
[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/](http://www.austlii.edu.au/au/legis/nsw/consol_act/)
6. Industrial Relations (General) Regulation 2001.

## Queensland

7. Industrial Relations Act 1999.  
[http://www.austlii.edu.au/au/legis/qld/consol\\_act/](http://www.austlii.edu.au/au/legis/qld/consol_act/)

## South Australia

8. Industrial and Employee Relations Act 1994.  
[http://www.austlii.edu.au/au/legis/sa/consol\\_act/](http://www.austlii.edu.au/au/legis/sa/consol_act/)

## Tasmania

9. Industrial Relations Act 1984.  
<http://www.thelaw.tas.gov.au/search/>

## Western Australia

10. Minimum Conditions of Employment Act 1993.
11. Minimum Conditions of Employment Regulations 1993.
12. Workplace Agreements Act 1993.

*Austria*

1. Federal Act of 14 December 1973, BGB1 No. 22/1974, respecting collective labour relations (ArbVG), as amended by Federal Act BGB1 No. 411/1990.
2. Insolvency (Guarantee of Remuneration) Act, Federal Act BGB1. No. 324/1977 (IESG), as amended by Federal Act BGB1. I No. 73/1999.
3. Bankruptcy Act, RGBI, No. 337/1914 (KO), last amended by BGB1. I No. 123/1999.
4. Compensation Act, BGB1. II No. 221/1934 (AO), last amended by BGB1. I No. 123/1999.
5. Labour Contracts Adjustment Act, BGB1 No. 459/1993, as amended by Federal Act BGB1. I No. 179/1999.
6. Federal Act No. 156 of 4 July 1951 concerning the making of minimum wage awards.
7. Federal Act No. 76 of 26 February 1947 respecting the determination of conditions of employment and remuneration by means of collective agreements and rules of employment.
8. Civil Code (ABGB), as amended.
9. Trade Ordinance, BGB1 No. 227/1859, as amended.
10. General Austrian Mining Act, RGB1 No. 146 of 23 May 1854, as amended.
11. Wage Attachment Regulations, RGB1 No. 79/1896, as amended by BGB1 No. 628/1991.

*Azerbaijan*

1. Labour Code of 1 February 1999.
2. Act of 13 June 1997 on insolvency and bankruptcy.

*Bahamas*

1. Employment Act No. 27 of 2001.
2. Bankruptcy Act (Ch. 61), as amended.
3. Companies Act (Ch. 184), as amended.
4. Minimum Wages Act No. 1 of 2002.

*Bahrain*

1. Amiri Decree Law No. 23 of 16 June 1976 promulgating the Labour Law for the Private Sector, as last amended by Legislative Decree No. 14 of 1993.  
<http://www.bah-molsa.com/english/index.asp>
2. Ministerial Order No. 22 of 12 August 1976 respecting the pattern of rules for penalties.
3. Ministerial Order No. 23 of 12 August 1976 respecting the disciplinary penalties, rules and procedures for discipline.
4. Ministerial Order No. 24 of 12 August 1976 with respect to disposing of the monies of fines which are deducted from the workers.
5. Ministerial Order No. 28 of 12 August 1976 respecting the organization of inspection functions.

*Barbados*

1. Protection of Wages Act, 1951.
2. Protection of Wages (Amendment) Act, 1975.
3. Bankruptcy Act, 1925.
4. Wages Council Act, 1955.

*Belarus*

1. Labour Code of 26 July 1999 (Text No. 432).
2. Act No. 423 of 18 July 2000 on economic insolvency (bankruptcy) (Text No. 361).
3. Decision of the Council of Ministers of 28 April 2000, No. 605 on the approval of the Regulations on the establishment of Reserve Wages Fund.
4. Decision of the Council of Ministers of 28 April 2000, No. 603 on the approval of the list of goods prohibited as a means of payment of wages in kind by the employers.
5. Civil Procedure Code of 11 January 1999 (Text No. 102).
6. Decision of the Council of Ministers of 30 September 1993, No. 664 on State Labour Inspection.

*Belgium*

1. Act of 12 April 1965 concerning the protection of workers' remuneration, as amended.
2. Royal Decree of 27 September 1966 establishing for the private sector the information that needs to be contained in the wage statement given to the worker at the time of each payment.
3. Royal Decree of 5 March 1986 establishing the procedure concerning the payment of wages in bank money and the assignment or attachment of assets in the bank account in which the worker's remuneration is paid.
4. Royal Decree No. 5 of 23 October 1978 concerning the maintenance of social documents.
5. Royal Decree of 8 August 1980 concerning the maintenance of social documents.
6. Act of 15 May 1956 on works stores.
7. Act of 8 April 1965 on works rules.
8. Act of 3 July 1978 on employment contracts.

*Benin*

1. Act No. 98-004 of 27 January 1998 establishing the Labour Code.

*Bolivia*

1. Supreme Decree of 26 May 1939 to issue the Labour Code, as amended.
2. Regulatory Decree No. 244 of 23 August 1943 regulating the General Labour Act, as amended.
3. Act of 7 September 1901.
4. Supreme Decree No. 21.060 of 29 August 1985.
5. Ministerial Resolution of 19 May 1954 regulating benefits for domestic workers.
6. Code of Civil Procedure of 2 April 1976.
7. Act 12.760 of 6 August 1975 to issue the Civil Code.
8. Supreme Decree No. 20.255 of 24 May 1984.

*Botswana*

1. Employment Act No. 29 of 1982.
2. Employment (Amendment) Act No. 26 of 1992.
3. Insolvency Act (Cap. 42:02).
4. Employment (Employment Cards) Regulations, 1984.
5. Employment (Miscellaneous Provisions) Regulations, 1984.

*Brazil*

1. Constitution of the Federative Republic of Brazil of 5 November 1988, as amended through to 12 June 2002.

2. Consolidation of Labour Laws of 1943, including amendments up to Act No. 10.288 of 20 September 2001.
3. Act No. 6019 of 3 January 1974 on temporary employment in urban enterprises and other regulations.
4. Decree No. 73841 of 13 March 1974 regulating Act No. 6019 of 3 January 1974.
5. Act No. 5869 of 11 January 1973 to issue the Code of Civil Procedure.
6. Legislative Decree No. 7661 of 21 June 1945 to issue the Bankruptcy Act, including amendments up to Provisory Measure No. 1.729, of 2 December 1998.
7. Regulatory Instruction No. 1 of 7 November 1989 concerning the intervals of wage payment.
8. Act No. 10406 of 10 January 2002 to issue the Civil Code.
9. Order No. 3626 of 13 November 1991 regulating the register of employees, annotations in the labour and social security card and on register of working hours.
10. Order No. 290 of 11 April 1997 approving the rules for the imposition of administrative fines provided by labour laws.
11. Law Decree No. 368 of 19 December 1968 respecting the effects of wage debts and other issues.
12. Order MTB No. 1061 of 1 November 1996 respecting the operation and procedures of the Wage Guarantee Fund and other regulations.

#### *Bulgaria*

1. Labour Code of 24 March 1986, as amended to 2001.  
<http://www.bild.net/legislation/>
2. Commerce Act, promulgated *State Gazette* No. 48/18.06.1991, as last amended *SG* No. 42/1996.
3. Code of Civil Procedure, as last amended *SG* No. 124/1997.
4. Ordinance of 1 January 1999 on the conditions and procedures for carrying out intermediary activity, informing and placing.

#### *Burkina Faso*

1. Act No. 11-92/ADP of 22 December 1992 establishing the Labour Code.
2. Order No. 94-009/ETSS/SG/DT of 3 June 1994 on the establishment of an individual wage slip and a wage register.
3. Decree No. 55-972 of 16 July 1955 concerning the attachment, assignment and deductions in respect of workers' wages or salaries, as amended by Decree No. 57-471 of 8 April 1957.
4. Decree No. 77-312/PRES/FPT of 17 November 1977 concerning the provision of daily food rations.
5. Decree No. 77-313/PRES/FPT of 17 November 1977 concerning the provision of lodging.

*Cameroon*

1. Act No. 92/007 of 14 August 1992 establishing the Labour Code.
2. Order No. 016/MTLS/DEGRE/SEJS of 15 July 1968 relating to pay documents.
3. Order No. 007/MTLS/DEGRE prescribing the procedure for communicating, registering and posting up the internal regulations.
4. Decree No. 93/575 of 15 July 1993 prescribing the procedure for establishing and approving certain contracts of employment.
5. Decree No. 94/197/PM of 9 May 1994 concerning wage deductions.
6. Order No. 018/MTPS/SG/CJ of 26 May 1993 concerning the conditions for granting house accommodation to workers and the minimum rates and procedure of payment of the housing allowance.

*Canada*

## Federal jurisdiction

1. Canada Labour Code, Part III, Chapter L-2.  
[http://info.load-otea.hrdc-drhc.gc.ca/federal\\_legislation/part3/legislation/clc3a.htm](http://info.load-otea.hrdc-drhc.gc.ca/federal_legislation/part3/legislation/clc3a.htm)
2. Canada Labour Standards Regulations, Chapter 986.  
[http://info.load-otea.hrdc-drhc.gc.ca/federal\\_legislation/part3/regs/r30101a.htm#section1](http://info.load-otea.hrdc-drhc.gc.ca/federal_legislation/part3/regs/r30101a.htm#section1)
3. Bankruptcy and Insolvency Act, Chapter B-3.  
<http://laws.justice.gc.ca/en/B-3/index.html>

## Provinces and Territories

## Alberta

4. Employment Standards Code, Chapter E-9.  
<http://www.qp.gov.ab.ca/documents/acts/E09.cfm>
5. Employment Standards Regulation (AR 14/97).  
[http://www.qp.gov.ab.ca/documents/regs/1997\\_014.cfm](http://www.qp.gov.ab.ca/documents/regs/1997_014.cfm)

## British Columbia

6. Employment Standards Act, Chapter 113.  
[http://www.qp.gov.bc.ca/statreg/stat/E/96113\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/E/96113_01.htm)

## Manitoba

7. Employment Standards Code, Chapter E110, Parts 3, 5 and 6.  
<http://www.gov.mb.ca/chc/statpub/free/pdf/e110.pdf>

## New Brunswick

8. Employment Standards Act, Chapter E-7.2, Parts 3, 4 and 5.  
<http://www.gnb.ca/acts/acts/e-07-2.htm>

## Newfoundland and Labrador

9. Labour Standards Act, Chapter L-2, Parts 5, 11 and 12.  
<http://www.gov.nf.ca/hoa/sr>

## Northwest Territories

10. Consolidation of Labour Standards Act, c. L-1.  
<http://www.lex-nt.ca/loi/pdf/type169a.pdf>

11. Consolidation of Wages Regulations, c. L-7.  
<http://www.lex-nt.ca/reg/pdf/REG133.pdf>

Nova Scotia

12. Labour Standards Code, Chapter 246.  
<http://www.gov.ns.ca/legislature/legc/statutes/labourst.htm>
13. General Labour Standards Code Regulations  
<http://www.gov.ns.ca/just/regulations/regs/lsc15496.htm>

Ontario

14. Employment Standards Act, Chapter 41, Parts 2, 5, 6 and 25.  
[http://192.75.156.68/DBLaws/Statutes/English/00e41\\_e.htm](http://192.75.156.68/DBLaws/Statutes/English/00e41_e.htm)

Prince Edward Island

15. Employment Standards Act, Chapter E-6.2.  
[http://www.gov.pe.ca/law/statutes/pdf/e-06\\_2.pdf](http://www.gov.pe.ca/law/statutes/pdf/e-06_2.pdf)

Quebec

16. Labour Standards Act, Chapter N-1.1.  
<http://publicationsduquebec.gouv.qc.ca/en/frame/index.html>

Saskatchewan

17. Labour Standards Act, Chapter L-1, as amended.  
<http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/L1.pdf>
18. Labour Standards Regulations, Chapter L-1 Reg 5, as amended.  
<http://www.qp.gov.sk.ca/documents/English/Regulations/Regulations/L1R5.pdf>

Cape Verde

1. General Statute on Labour Relations, Legislative Decree No. 62/87 of 30 June 1987, as amended up to 1993.

*Central African Republic*

1. Act No. 61-221 of 2 June 1961 establishing the Labour Code.
2. Order No. 82/012/MFPTSS/SG/DGTE-DESTRE of 17 November 1982 on the particulars of an individual wage slip.
3. Order No. 82/011/MFPTSS/SG/DGTE-DESTRE of 17 November 1982 on the provision of lodging to workers.
4. Decree No. 68/028-PG of 12 January 1968 concerning the attachment, assignment and deductions in respect of workers' wages or salaries.

*Chad*

1. Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code.
2. Decree No. 106/PR-MTJS-DTMOPS of 18 May 1967 on the establishment of a wage slip.



3. Decree No. 248/PR-MTJS of 25 October 1967 concerning the employer's register and the register of foreign workers.
4. Decree No. 167/MTJS/66 of 9 August 1966 concerning the attachment, assignment and deductions in respect of workers' wages or salaries.

#### Chile

1. Labour Code of 7 January 1994, as amended up to 27 September 2001.  
[http://www.netchile.com/normas/codice/Codigo\\_del\\_Trabajo.pdf](http://www.netchile.com/normas/codice/Codigo_del_Trabajo.pdf)
2. Civil Code of 9 October 1992.  
[http://www.paginaschile.cl/biblioteca\\_juridica/codigo\\_civil/codigo\\_civil\\_de\\_chile.htm](http://www.paginaschile.cl/biblioteca_juridica/codigo_civil/codigo_civil_de_chile.htm)

#### China

1. Interim Provisions on Payment of Wages, Circular of the Ministry of Labour No. 489 of 6 December 1994.
2. Labour Act of 5 July 1994.
3. Regulations concerning minimum wages in enterprises, dated 24 November 1993.
4. Enterprise Bankruptcy Act, Order of the President of the PRC No. 45 of 2 December 1986.

#### Colombia

1. Decree No. 2663 of 5 August 1950 to promulgate the Labour Code, as amended until Act No. 755 of 23 July 2002.  
[http://www.mintrabajo.gov.co/SGP/otros/codigo\\_sustantivo\\_del\\_trabajo.htm](http://www.mintrabajo.gov.co/SGP/otros/codigo_sustantivo_del_trabajo.htm)
2. Civil Code.

#### Comoros

1. Act No. 84-018/PR of 18 February 1984 establishing the Labour Code.

#### Congo

1. Act No. 45-75 of 15 March 1975 establishing the Labour Code.
2. Act No. 6-96 of 6 March 1996 to modify and supplement certain provisions of Act No. 45-75.
3. Decree No. 78/363/MDT-SGFPT-DTPS-ST of 12 May 1978 concerning the attachment, assignment and deductions in respect of workers' wages or salaries.

#### Costa Rica

1. Act No. 2 of 26 August 1943, to issue the Labour Code, as amended.  
<http://natlex.ilo.org/txt/S95CRI02.htm>
2. Executive Decree No. 11324 of 9 April 1980 to prohibit the payment of wages in the form of alcoholic drinks or drugs in accordance with ILO [Convention No. 95](#).
3. Organic Act No. 1860 of 21 April 1955 concerning the Ministry of Labour and Social Security, as amended.

*Côte d'Ivoire*

1. Act No. 95-15 of 12 January 1995 establishing the Labour Code.
2. Decree No. 67-73 of 9 February 1967 to codify the regulations established in application of Title IV "Wages" of Act No. 64-290 of 1 August 1964 establishing the Labour Code.
3. Decree No. 96-287 of 3 April 1996 concerning the labour contract.
4. Act No. 92-570 of 11 September 1992 on Public Service.
5. Inter-Professional Collective Agreement of 20 July 1977.

*Croatia*

1. Labour Act of 17 May 1995 (Text No. 758), as amended.
2. Bankruptcy Act of 17 May 1996.  
[http://marvin.globalnet.hr/www.hfp2.hr/eng/main.asp?link=pravni\\_okvir](http://marvin.globalnet.hr/www.hfp2.hr/eng/main.asp?link=pravni_okvir)

*Cuba*

1. Act No. 49 of 28 December 1984 to issue the Labour Code.

*Cyprus*

1. Act No. 100(I) of 2000 on the employer's obligation to inform the employee on the conditions applicable to the employment contract or relationship.
2. Act No. 8(I) of 1997 on private employment agencies.
3. Act No. 134(I) of 1999 to amend the Civil Procedure Act.
4. Bankruptcy Act (Cap. 5), as amended by Act No. 197 of 1986.
5. Companies Act (Cap. 113), as amended by Act No. 198 of 1986.

*Czech Republic*

1. Labour Code, Act No. 65/1965 Coll., as last amended by Act No. 258/2000 Coll.
2. Act No. 1/1992 Coll. on wages, remuneration for stand-by, and average earnings, as last amended by Act No. 217/2000 Coll.
3. Act No. 328/1991 Coll. on bankruptcy proceedings and liquidation, as amended last by Act No. 214/2000 Coll.
4. Act No. 143/1992 concerning wages, remuneration for stand-by, and average earnings in budgetary and certain other organizations and bodies, as amended.
5. Act No. 118/2000 Coll. on protection of employees in the event of their employer's insolvency.
6. Charter of fundamental rights and freedoms of 1 January 1991.
7. Decree No. 185 of 26 May 1993 on amounts immune from seizure.
8. Employment Act No. 1/1991 Coll., as amended last by Act No. 369/2000 Coll.
9. Act No. 9/1991 concerning employment and jurisdiction of authorities in the sphere of employment, as amended last by Act No. 74/1994.

*Democratic Republic of the Congo*

1. Legislative Ordinance No. 67/310 of 9 August 1967 establishing the Labour Code, as amended up to 31 December 1996.
2. Order No. 17/67 of 3 October 1967 relating to payroll records and wage statements.
3. Order No. 15/67 of 3 October 1967 concerning the contract of employment.
4. Order No. 70/0016 of 11 August 1970 concerning works rules.
5. Ordinance No. 70-341 of 23 December 1970 concerning the regulation of minimum wages and family allowances.

*Denmark*

1. Employees' Guarantee Fund Act No. 116 of 13 April 1972, as amended.
2. Bankruptcy Act No. 298 of 8 June 1977.

*Djibouti*

1. Act No. 52-1322 of 15 December 1952 establishing the Labour Code.
2. Act No. 140/AN/97/3ème L modifying the Labour Code of 1952.
3. Decree No. 55-972 of 16 July 1955 concerning the attachment, assignment and deductions in respect of workers' wages or salaries, as amended by Decree No. 57-471 of 8 April 1957.

*Dominica*

1. Protection of Wages Act (Ch. 89:07).
2. Labour Contracts Act (Ch. 89:04).
3. Bankruptcy Act (Ch. 9:90).
4. Labour Standards Act (Ch. 89:05).
5. Dangerous Drugs Act (Cap. 145).

*Dominican Republic*

1. Act No. 16-92 of 29 May 1992 to issue the Labour Code.  
<http://www.set.gov.do/legislacion/codigo/index.htm>
2. Decree No. 25893 of 1 October 1993 to issue the Regulations for the implementation of the Labour Code.
3. Tax Code, as amended.
4. Social Security Act of 9 May 2001.
5. Criminal Code, as amended.

*Ecuador*

1. Political Constitution, Legislative Decree No. 000. RO/1 of 11 August 1998.
2. Labour Code, as amended by Act 2000-4.  
<http://www.ccq.org.ec/biblio/indexlex.asp>

3. Civil Code, Codification No. 000. RO/ Sup No. 104 of 20 November 1970.

#### *Egypt*

1. Act No. 137 of 6 August 1981 promulgating the Labour Code, as amended up to June 1999.
2. Act No. 47 of 1978 governing civil servants in the public service.
3. Act No. 48 of 1978 concerning employees in the public sector.

#### *El Salvador*

1. Political Constitution of 15 December 1983, as amended up to 16 February 1999.  
<http://www.asamblea.gob.sv/constitucion/1983.htm>
2. Labour Code of 23 June 1972, as amended up to July 1995.  
[http://www.oit.or.cr/oit/papers/cod\\_elsa.shtml](http://www.oit.or.cr/oit/papers/cod_elsa.shtml)

#### *Estonia*

1. Employment Contracts Act of 15 April 1992.
2. Wages Act of 26 January 1994.
3. Bankruptcy Act of 10 June 1992.
4. Unemployment Insurance Act of 13 June 2001.

#### *Finland*

1. Employment Contracts Act (55/2001).
2. Pay Security Act (866/1998), as amended by Acts Nos. 438/200 and 78/2001.  
<http://www.mol.fi/english/working/paysecurityact.html>

#### *France*

1. Labour Code, as at 2001.  
<http://www.legifrance.gouv.fr/WAspad/ListeCodes>
2. Act No. 78-49 of 19 January 1978 concerning the monthly payment of wages.
3. Civil Code.

#### *Gabon*

1. Act No. 3/94 of 21 November 1994 establishing the Labour Code, as amended by Act No. 12/2000 of 12 October 2000.
2. Decree No. 154/PR of 5 June 1963 concerning attachment, assignment and deductions in respect of wages, salaries and allowances.

#### *Germany*

1. Trade, Commerce and Industry Regulation Act.  
<http://jurcom5.juris.de/bundesrecht/gewo/index.html>
2. Act over the proof of the substantial conditions of an employment relationship.  
<http://jurcom5.juris.de/bundesrecht/nachwg/index.html>

3. Civil Code.  
<http://jurcom5.juris.de/bundesrecht/bgb/index.html>
4. Commercial Code.  
<http://jurcom5.juris.de/bundesrecht/hgb/index.html>
5. Code of Civil Procedure.  
<http://jurcom5.juris.de/bundesrecht/zpo/index.html>
6. Insolvency Statute of 5 October 1994.  
<http://www.kanzlei-doeheimer.de/webdoc46.htm>

### Ghana

1. Labour Decree, 1967
2. Labour Regulations, 1969.
3. Companies Code, 1963.

### Greece

1. Civil Code.
2. Presidential Decree No. 156 of 2 July 1994 concerning the employer's obligation to inform the employee on the conditions applicable to the contract or employment relationship.
3. Royal Decree of 24 July-21 August 1920 consolidating the laws concerning the payment of wages to workers, servants and salaried employees.
4. Royal Decree of 14-20 September 1912 extending the laws concerning the payment of wages and salaries.
5. Presidential Decree No. 1/1990 concerning the protection of workers' rights in the event of the insolvency of their employer.
6. Act No. 1836/1989 concerning the promotion of employment and vocational training.

### Guatemala

1. Political Constitution of 31 May 1985.
2. Labour Code, Decree No. 1441 of 5 May 1961, as amended to September 1995.
3. Decree No. 64-92 of 2 December 1992 regarding the reform of the Labour Code.

### Guinea

1. Ordinance No. 003/PRG/SGG/88 of 28 January 1988 establishing the Labour Code.
2. Order No. 3128/ITLS of 13 June 1955 concerning the provision of lodging by the employer.

### Guinea-Bissau

1. General Labour Act No. 2 of 5 April 1986.

*Guyana*

1. Labour Act (Cap. 98:01) (No. 2 of 1942), as amended.
2. Insolvency Act (Cap. 12:21).
3. Companies Act (Cap. 89:01).
4. Wages Councils Act (Cap. 98:04) (No. 51 of 1956), as amended.

*Honduras*

1. Political Constitution of 11 January 1982, as amended.
2. Decree No. 189-59 of 15 July 1959 to issue the Labour Code, as amended.
3. Civil Code of 1 March 1906, as amended.

*Hungary*

1. Labour Code, Act XXII of 1992.
2. Act IL of 1991 on bankruptcy proceedings, liquidation proceedings and final accounting, as amended.
3. Act LIII of 1994 on distraint by court.

*India*

1. Payment of Wages Act, 1936, as amended.  
<http://www.indiacode.nic.in/>
2. Minimum Wages Act, 1948, as amended.
3. Minimum Wages (Central) Rules, 1950, as amended.

*Indonesia*

1. Act on Manpower Affairs No. 25 of 3 October 1997.
2. Government Regulation No. 8 of 1981 on Protection of Wages.

*Iraq*

1. Act No. 71 of 27 July 1987 establishing the Labour Code.

*Islamic Republic of Iran*

1. Labour Code of 20 November 1990.
2. Ministerial Directive No. 65-37 of 18 March 2000 concerning wage increases.
3. Guidelines of 5 October 1991 on workers' cooperative organizations in application of article 153 of the Labour Code.

*Israel*

1. Wage Protection Act 5718-1958, as amended up to 1995.
2. National Insurance Act (Consolidated Version) 5755-1995, as amended up to 1997.
3. Labour Inspection (Organisation) Act 5714-1954.

*Italy*

1. Civil Code.
2. Legislative Decree No. 80 of 27 January 1992 – Implementation of EEC Directive 987/80 on employee protection in the event of the employer’s insolvency.
3. Legislative Decree No. 152 of 26 May 1997 – Implementation of EEC Directive 533/91 on the employer’s obligation to inform the worker about the conditions applicable to the contract or employment relationship.
4. Act No. 4 of 5 January 1953 concerning workers’ wage statements.
5. Act No. 297 of 29 May 1982 concerning the termination of the employment relationship and matters related to pensions.

*Japan*

1. Civil Code, Act No. 89 of 1896.
2. Labour Standards Act No. 49 of 7 April 1947, as amended last by Act No. 107 of 9 June 1995.
3. Enforcement Regulations of the Labour Standards Act, Ordinance No. 23 of 30 August 1947, as amended last by Ordinance No. 29 of 18 December 1990.
4. Bankruptcy Act No. 71 of 25 April 1922.
5. Mariners Act No. 100 of 1 September 1947.
6. Security of Wage Payment Act No. 34 of 27 May 1976, as amended last by Act No. 25 of 8 May 1984.

*Jordan*

1. Labour Code, Act No. 8 of 1996.
2. Civil Code, Act No. 43 of 1976.

*Kenya*

1. Employment Act (Cap. 226).
2. Regulation of Wages and Conditions of Employment Act (Cap. 229).
3. Bankruptcy Act (Cap. 53).
4. Companies Ordinance (Cap. 486).

*Korea, Republic of*

1. Labour Standards Act No. 5309 of 13 March 1997, as amended last by Act No. 6507 of 14 August 2001.  
[http://www.koilaf.org/admin/data\\_bank/file/labor\\_standards\(1\).pdf](http://www.koilaf.org/admin/data_bank/file/labor_standards(1).pdf)
2. Wage Claim Guarantee Act No. 5513 of 20 February 1998, as amended last by Act No. 6334 of 30 December 2000.  
[http://www.koilaf.org/admin/data\\_bank/file/Labor\\_Standards\(9\).pdf](http://www.koilaf.org/admin/data_bank/file/Labor_Standards(9).pdf)
3. Enforcement Decree of the Wage Claim Guarantee Act No. 15804 of 26 May 1998, as amended last by Decree No. 17244 of 22 June 2001.  
[http://www.koilaf.org/admin/data\\_bank/file/Labor\\_Standards;\(10\).pdf](http://www.koilaf.org/admin/data_bank/file/Labor_Standards;(10).pdf)

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### Kuwait

1. Act No. 38 of 1964 concerning labour in the private sector.
2. Ministerial Decree No. 115/96 of 1996 on the promulgation of regulations concerning employment agencies.

### *Kyrgyzstan*

1. Labour Code of 18 September 1997.
2. Bankruptcy Act of 22 September 1997.

### *Lebanon*

1. Labour Code, Act of 23 September 1946, as amended up to 24 July 1996.
2. Order No. 65/1 of 17 February 1995 concerning the procedure for applying certain provisions of international labour [Conventions Nos. 52, 59, 78 and 95](#).
3. Decree No. 3273 of 26 June 2000 relating to labour inspection.
4. Order No. 6695 of 1 April 1949 relating to disciplinary fines.

### *Libyan Arab Jamahiriya*

1. Labour Code, Act No. 58-2970 of 1 May 1970.

### Lithuania

1. Employment Contracts Act of 28 November 1991, as amended by 14 May 2002.  
<http://www3.lrs.lt/c-bin/eng/preps2?Condition1=187978&Condition2=>
2. Wages Act of 9 January 1991, as amended by 23 March 1999.  
<http://www3.lrs.lt/c-bin/eng/preps2?Condition1=91666&Condition2=>
3. Enterprise Bankruptcy Act of 20 March 2001.  
<http://www3.lrs.lt/c-bin/eng/preps2?Condition1=136576&Condition2=>
4. Guarantee Fund Act of 12 September 2000, as amended by 27 February 2001.  
<http://www3.lrs.lt/c-bin/eng/preps2?Condition1=129864&Condition2=>

### Luxembourg

1. Act of 12 July 1895 concerning the payment of workers' wages, as amended up to 1998.
2. Act of 24 May 1989 on the employment contract, as amended up to 1995.  
<http://www.etat.lu/MT/loisregl/ctrav.doc>
3. Act of 11 November 1970 on the assignment and attachment of wages and pensions, as amended up to 1992.  
<http://www.secu.lu/legis/legis/saisies/L111170.html>
4. Regulation of 26 June 2002 establishing the permissible amounts of assignable or attachable wages and pensions.
5. Civil Code  
[http://www.etat.lu/LEGILUX/DOCUMENTS\\_PDF/CODES/CODE\\_CIVIL/](http://www.etat.lu/LEGILUX/DOCUMENTS_PDF/CODES/CODE_CIVIL/)



*Madagascar*

1. Act No. 94-029 of 25 August 1995 establishing the Labour Code.
2. Order No. 128-IGT of 5 August 1957 providing for pay slips and wage records.
3. Decree No. 61-714 of 28 December 1961 regarding the conditions for the establishment and operation of company stores.
4. Decree No. 55-972 of 16 July 1955 concerning the attachment, assignment and deductions in respect of workers' wages or salaries, as amended by Decree No. 57-471 of 8 April 1957.

*Malaysia*

1. Employment Act 1955, as amended up to 31 July 2001.
2. Companies Act 1965, as at 15 September 2000.
3. Employment Regulations 1957, as amended.
4. Dangerous Drugs Ordinance No. 30 of 1952.

*Mali*

1. Act No. 92-020 of 23 September 1992 establishing the Labour Code.
2. Decree No. 96-178/P-RM of 13 June 1996 concerning the application of various provisions of the Labour Code.
3. Order No. 96-1566/MEFPT-SG of 7 October 1996 concerning practical measures for the application of certain provisions of the Labour Code.

*Malta*

1. Conditions of Employment (Regulation) Act (Cap. 135), as last amended by Act No. XXIV of 1995.  
<http://www.justice.magnet.mt/dir2-laws/toppage.asp>
2. Code of Organization and Civil Procedure (Cap. 12), as amended.

*Mauritania*

1. Act No. 63-023 of 23 January 1963 establishing the Labour Code.
2. Decree No. 65-095 of 4 June 1965 fixing the portions of salaries and pensions which may be liable to progressive levies.
3. Act No. 62-052 of 2 February 1962 establishing the Code of Civil, Commercial and Administrative Procedure.
4. Order No. 364 of 25 September 1955 concerning the establishment of a pay slip and a wage register, as amended by Orders No. 73 of 3 March 1956 and No. 10.287 of 2 June 1965.

*Mauritius*

1. Labour Act No. 50 of 30 December 1975, as amended to 2001.
2. Labour Regulations, 1976.
3. Code Napoléon (Amendment No. 2) Act 1982.

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4. Income Tax Act 1995.  
<http://ncb.intnet.mu/govt/acts.htm>

*Mexico*

1. Political Constitution of the United Mexican States of 5 February 1917, as amended.
2. Federal Labour Act of 1 April 1970, as amended up to 23 January 1998.  
<http://www.cddhcu.gob.mx/leyinfo/125/>
3. Act on Bankruptcy and Suspension of Payments, 1943.

*Moldova, Republic of*

1. Labour Code, Act of 25 May 1973, as amended up to 23 July 1998.
2. Wages Act No. 1305 of 25 February 1993.
3. Bankruptcy Act No. 786-XIII of 26 March 1996, as amended by Act No. 1254-XIII of 16 July 1997.
4. National Collective Agreement of 1998 (Government decision No. 323 of 20 March 1998).
5. Code of Administrative Offences of 29 March 1985, as amended.

Morocco

1. Decree of 24 January 1953 respecting the calculation and payment of remuneration, company stores, and lawful and unlawful subcontracting, as amended by Act No. 1-72-238 of 30 December 1972.
2. Decree of 12 August 1913 on obligations and contracts.
3. Decree of 7 June 1941 concerning the attachment and assignment of wages.
4. Decree of 18 June 1936 concerning security amounts.
5. Decree of 17 March 1954 regulating works stores in remote construction sites, agricultural undertakings or industrial mines and quarries.

Myanmar

1. Payment of Wages Act, 1936.

Mozambique

1. Labour Act No. 8/98 of 20 July 1998.

Namibia

1. Labour Act No. 6 of 13 March 1992.
2. Government Notice No. 174 of 3 November 1992 on keeping of records and submission of certain particulars by employers in terms of section 4(1) of the Labour Act.

3. Government Notice No. 175 of 3 November 1992 on particulars to be indicated on envelope or statement when remuneration is paid to employee in terms of section 36(3) of the Labour Act.

#### *Netherlands*

1. Civil Code.
2. Act of 2 December 1993 implementing the EC Council Directive on information for employees concerning their contract or employment relationship.
3. Alcoholic Beverages Act of 7 October 1964.

#### *New Zealand*

1. Wages Protection Act 1983 (No. 143), as amended.  
<http://rangi.knowledge-basket.co.nz/gpacts/public/text/1983/an/143.html>
2. Insolvency Act 1967 (No. 54), as amended.
3. Companies Act 1993 (No. 105), as amended.
4. Minimum Wage Act 1983 (No. 115), as amended.
5. Employment Relations Act 2000 (No. 24).  
<http://rangi.knowledge-basket.co.nz/gpacts/public/text/2000/an/024.html>
6. Child Support Act 1991 (No. 142), as amended.

#### *Nicaragua*

1. Political Constitution, as amended up to 1995.
2. Act No. 185 of 30 October 1996 to issue the Labour Code.
3. Act to create the national payroll, Decree No. 1160 of 15 December 1982.
4. Regulations of 30 October 1984 on the national payroll.
5. Instructions of 30 October 1984 concerning the use of the national payroll (PNP-1).
6. Instructions of 30 October 1984 concerning the use of the national payroll (PNP-2).
7. Labour Inspectors Regulations, Decree No. 13-97 of 20 February 1997.

#### *Niger*

1. Ordinance No. 96-039 of 29 June 1996 establishing the Labour Code.
2. Decree No. 96-413/PRN/MFPT/E of 4 November 1996 concerning the conditions for establishing certain contracts of employment.
3. Decree No. 67-126/MFP/T of 7 September 1967 establishing the regulations in application of the Labour Code.

#### *Nigeria*

1. Labour Act (Ch. 198) (No. 21 of 1974) as amended up to 31 December 1989.  
<http://www.nigeria-law.org/>
2. Companies and Allied Matters Act (Ch. 59).

3. Bankruptcy Act (Ch. 30).
4. National Salaries, Incomes and Wages Commission Decree (No. 99 of 1993).

#### *Norway*

1. Act No. 4 of 4 February 1977 relating to Worker Protection and Working Environment, as subsequently amended, last by Act No. 38 of 26 May 2000.
2. Creditors Security Act No. 59 of 8 June 1984, as amended.
3. Act No. 61 of 14 December 1973 relating to the state guarantee for wage claims in the event of bankruptcy, etc., as amended by Act No. 27 of 15 May 1998.
4. Regulation No. 999 of 28 October 1998 relating to the state guarantee for wage claims in the event of bankruptcy, etc.

#### *Oman*

1. Labour Act, Sultan's Decree No. 34 of 15 November 1973.  
<http://www.omanet.com/labourlaw.htm>

#### *Panama*

1. Decree No. 252 of 30 December 1971 to issue the Labour Code, as amended last by Act No. 44 of 12 August 1995.

#### *Paraguay*

1. Act. No. 213 of 1993 to issue the Labour Code, as amended by Act No. 496/95.  
<http://www.senado.gov.py/>
2. Act No. 1183 of 23 December 1985 to issue the Civil Code, as amended.

#### *Peru*

1. Supreme Decree No. 003-97-TR of 21 March 1997 to promulgate the Labour Productivity Act.
2. Supreme Decree No. 001-97-TR to promulgate the Compensation for Service Act.
3. Legislative Decree No. 14.404 of 7 February 1963 concerning the direct and personal payment of wages to employees and workers.
4. Supreme Decree No. 001-96-TR of 24 January 1996 to regulate the Promotion of Employment Act.
5. Supreme Decree No. 001-98-TR of 20 January 1998 regulating the obligation of the employers to maintain wage records.
6. Supreme Decree No. 017-2001-TR of 6 June 2001 modifying the Supreme Decree No. 001-98-TR.
7. Supreme Decree No. 014-99-ITINCI of 30 October 1999 to approve the Patrimonial Restructuring Act.
8. Legislative Decree No. 856 of 25 September 1996 concerning labour credits.
9. Legislative Decree No. 25.593 of 2 July 1992 concerning the Collective Labour Relations Act.

10. Act No. 26.599 modifying the Code of Civil Procedure.
11. Supreme Decree No. 074-90-TR concerning the General Act on Cooperatives.
12. Legislative Decree No. 21.635 concerning rules for the promotion of the construction of low-cost housing.
13. Act No 13.500 concerning benefits granted to certain employees for the construction and acquisition of housing.

#### *Philippines*

1. Labor Code, Presidential Decree No. 442 of 1 May 1974, as amended.
2. Rules to implement the Labor Code.
3. Civil Code.

#### *Poland*

1. Labour Code, Act of 26 June 1974, as amended up to 1996.
2. Act of 29 December 1993 concerning the protection of workers' claims in the event of the insolvency of their employer.
3. Order of the Minister of Labour and Social Policy of 11 January 1995 concerning the extension of employees' benefits financed by the Guaranteed Workers' Benefits Fund.
4. Order of the Minister of Labour and Social Policy of 21 February 1994 concerning the statutes of the Council of the Guaranteed Workers' Benefits Fund.
5. Order of the Minister of Commerce of 19 January 1953 on the fixing of prices in canteens for workers and students.
6. Code of Civil Procedure.

#### *Portugal*

1. Act No. 4/84 of 5 April 1984 concerning maternity and paternity protection.
2. Act No. 58/99 of 30 June 1999.
3. Act No. 142/99 of 31 August 1999.
4. Legislative Decree No. 409/71 of 27 September 1971.

#### *Qatar*

1. Labour Act No. 3 of 1962, as amended.

#### *Romania*

1. Labour Code, Act No. 10 of 23 November 1972.
2. Act No. 14 of 8 February 1991 on remuneration.
3. National collective agreement 1999-2000.
4. Act No. 142 of 1998 on meal coupons.
5. Code of Civil Procedure.

*Russian Federation*

1. Labour Code, Act No. 197-FZ of 30 December 2001.
2. Act of 8 January 1998 on insolvency (bankruptcy).
3. Civil Code of 21 October 1994.
4. Federal Act No. 48-FZ of 15 March 1999 adding a new section 145-1 into the Penal Code.

*Rwanda*

1. Act of 28 February 1967 establishing the Labour Code, as amended last by Act No. 5/96 of 29 March 1996.
2. Ministerial Order No. 53/06/062 of 20 December 1972 establishing the limits for the attachment or assignment of wages.
3. Ministerial Order No. 54/06/062 of 20 December 1972 establishing the conditions under which the employer must provide the worker with food supplies.
4. Ministerial Order No. 55/06/062 of 20 December 1972 establishing a model type of wage statement.
5. Ministerial Order No. 58/06/061 of 20 December 1972 establishing the conditions under which the worker must be provided with accommodation.

*Saint Vincent and the Grenadines*

1. Employers and Servants Act (Cap. 145), as last amended by Act No. 23 of 1988.
2. Wages Councils Act (Cap. 155), as last amended by Act No. 20 of 1987.
3. Companies Act No. 8 of 1994.
4. National Insurance Act No. 33 of 1986 (Cap. 229).

*Saudi Arabia*

1. Royal Decree No. M/21 of 15 November 1969 establishing the Labour Code.

*Senegal*

1. Act No. 97-17 of 1 December 1997 establishing the Labour Code.
2. Order No. 973 MFPT/DTSS of 23 January 1968 concerning the pay slip and the wage register.
3. Decree No. 63-0118 MFPT/DTSS of 19 February 1963 concerning the forms and procedures for establishing the labour contract.
4. Decree No. 76-1031 of 19 October 1976 amending the Civil Procedure Code.

*Seychelles*

1. Employment Act, 1995.
2. Civil Code.

*Singapore*

1. Employment Act (Ch. 91), as amended to 30 April 1996.  
<http://statutes.agc.gov.sg/>
2. Companies Act (Ch. 50).

*Slovakia*

1. Labour Code, Act No. 311/2001 Coll., as amended by Act No. 165/2002 Coll.
2. Act No. 328/1991 Coll. on bankruptcy proceedings and liquidation, as amended.
3. Act No. 292/1999 amending the Employment Act No. 387/1996 Coll. concerning the Guarantee Fund.
4. Charter of fundamental rights and freedoms of 1 January 1991.
5. Decree No. 89 of 25 February 1997 on the amounts of wage (salary) deductions pursuant to forced execution of court rulings.
6. Act No. 95/2000 Coll. of 8 February 2000 on labour inspection.

*Slovenia*

1. Employment Act of 24 April 2002.
2. Guarantee Fund Act of 5 May 1997, as amended.

*Spain*

1. Royal Legislative Decree No. 1/1995 of 24 March 1995 regarding the Workers Statute Law, as amended.  
<http://www.mtas.es/guia2002/leyes/RDLG195.htm>
2. Decree of 21 March 1958 regulating the compulsory creation of work stores, as amended.
3. Order of 14 May 1958 regulating the compulsory creation of work stores, as amended.
4. Royal Legislative Decree No. 1/1994, of 20 June 1994 to issue the consolidated text of the Social Security General Act.
5. Act No. 40/1998 of 9 December 1998 regulating the personal income tax and other tax rules, as amended up to 31 March 2002.
6. Order of 27 December 1994 regulating the model type of the wage statement.
7. Organic Act No. 11/1985 of 2 August 1985 regulating the freedom of association, as amended by Organic Act No. 14/1994 of 19 May 1994.
8. Act No. 51/1980 of 8 October 1980 on employment.
9. Act No. 14/1994 of 1 June 1994 regulating the temporary employment companies, as amended by Act No. 29/1999 of 16 July 1999.
10. Royal Decree No. 1659/1998 of 24 July 1998 concerning the information to the worker on the essential elements of the employment contract.
11. Royal Order of 29 July 1889 to issue the Civil Code, as amended.
12. Commercial Code of 22 August 1885, as amended.

13. Royal Decree No. 505/1985, of 6 March 1985 on the establishment and operation of the Wage Guarantee Fund.  
<http://www.mtas.es/fogasa/informativa.htm>
14. Decree of 26 January 1944 to approve the consolidated text of the First Book of the Act respecting contracts of employment.
15. Act No. 11/1994 of 19 May 1994 amending sections of the Workers Statute Law, and the text of the Labour Procedure Act and the Act on infringements and sanctions in the social order.
16. Act No. 42/1997 of 14 November 1997 respecting the labour and social security inspection.
17. Royal Legislative Decree No. 5/2000 of 4 August 2000 to approve the consolidated text of the Act on infringements and sanctions in the social order.
18. Civil Procedure Act No. 1/2000 of 7 January 2000.

#### *Sri Lanka*

1. Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954, as amended.
2. Wages Boards Ordinance No. 27 of 1941, as amended.
3. Companies Act No. 17 of 1982.
4. Shop and Office Employees (Regulation of Employment and Remuneration) Regulations, 1954.
5. Wages Boards Regulations, 1971.
6. Civil Procedure Code (Cap. 101), as amended.

#### *Sudan*

1. Labour Code of 21 June 1997.

#### *Suriname*

1. Government Order of 8 September 1947 to amend and supplement the provisions of the Suriname Civil Code regarding the hiring of domestic servants and workmen and related articles of the said Code and of the Suriname Code of Civil Procedure and the Suriname Bankruptcy Decree, 1935.

#### *Swaziland*

1. Employment Act, 1980.
2. Employment (Amendment) Act, 1997.

#### *Sweden*

1. Wage Guarantee Act (SFS 1992: 497), as amended.
2. Protection of Employment Act (SFS 1982: 80).



### Switzerland

1. Federal Labour Act of 13 March 1964, as amended through Federal Act of 24 March 2000.  
[http://www.admin.ch/ch/f/rs/c822\\_11.html](http://www.admin.ch/ch/f/rs/c822_11.html)
2. *Code des Obligations*, Federal Act of 30 March 1911 supplementing the Swiss Civil Code.  
<http://www.admin.ch/ch/f/rs/c220.html>
3. Federal Act of 11 April 1889 on debt recovery and bankruptcy proceedings, as last amended on 24 March 2000 (LP).  
[http://www.admin.ch/ch/f/rs/c281\\_1.html](http://www.admin.ch/ch/f/rs/c281_1.html)
4. Federal Act of 25 June 1982 on compulsory unemployment insurance and compensation in case of insolvency (LACI).
5. Federal Act of 20 December 1946 on old-age and survivor insurance (LAVS).

### *Syrian Arab Republic*

1. Act No. 91 of 5 April 1959 establishing the Labour Code, as last amended by Act No. 24 of 10 December 2000.
2. Order No. 332 of 23 June 1960 concerning the mode of payment of wages.
3. Act No. 34 of 21 December 2000 to amend the Agricultural Relations Act 1958.
4. Ministerial Instructions No. G/1/6450 of 4 September 1961 concerning minimum wage fixing.

### *Tajikistan*

1. Labour Code of 15 May 1997 (Text No. 417).
2. Act No. 550 of 10 March 1992 on bankruptcy of enterprises.
3. Civil Service Act of 13 November 1998 (Text No. 677).

### *United Republic of Tanzania*

1. Employment Ordinance (Cap. 366), as amended.
2. Zanzibar Labour Act, 1997.
3. Regulation of Wages and Terms of Employment Ordinance (Cap. 300), as amended.

### Thailand

1. Labour Protection Act B.E. 2541 of 12 February 1998.

### *Togo*

1. Ordinance No. 16 of 8 May 1974 establishing the Labour Code.
2. Decree No. 55-972 of 16 July 1955 concerning the attachment, assignment and deductions in respect of workers' wages or salaries, as amended by Decree No. 57-471 of 8 April 1957.

*Tunisia*

1. Labour Code, Act No. 66-27 of 30 April 1966, as last amended by Act No. 96-62 of 15 July 1996.

*Turkey*

1. Labour Act No. 1475 of 25 August 1971, as amended.
2. Execution and Bankruptcy Act No. 2004, as amended.

*Uganda*

1. Employment Decree (No. 4 of 1975).
2. Employment Regulations (No. 41 of 1977).
3. Bankruptcy Act (Cap. 71).
4. Companies Act (Cap. 85).
5. Social Security Act No. 21 of 1967.

*Ukraine*

1. Labour Code, as at 11 April 1994.
2. Wages Act of 24 March 1995, as amended.
3. Bankruptcy Act of 14 May 1992, as amended.
4. Decision of the Cabinet of Ministers No. 244 of 3 April 1993 regarding the list of goods prohibited as a means of payment of wages in kind.
5. Act No. 1979-111 of 21 September 2000 amending the Penal Code and the Code of Administrative Offences.

## United Arab Emirates

1. Federal Law No. 8 of 20 April 1980 to regulate employment relationships.
2. Ministerial Decree No. 1/45 of 1980 on determining ways of disposing of fines deducted from workers' wages.

## United Kingdom

1. Employment Rights Act 1996 (Chapter 18).  
<http://www.hmso.gov.uk/acts/acts1996/1996018.htm#aofs>
2. Attachment of Earnings Act 1971 (Chapter 32).
3. National Minimum Wage Act 1998 (Chapter 39).  
<http://www.hmso.gov.uk/acts/acts1998/19980039.htm#aofs>
4. Insolvency Act 1986 (Chapter 45).
5. Bankruptcy (Scotland) Act 1985 (Chapter 66).
6. Pension Schemes Act 1993 (Chapter 48).  
[http://www.hmso.gov.uk/acts/acts1993/Ukpga\\_19930048\\_en\\_1.htm#tcon](http://www.hmso.gov.uk/acts/acts1993/Ukpga_19930048_en_1.htm#tcon)
7. Social Security Administration Act 1992 (Chapter 5).  
[http://www.hmso.gov.uk/acts/acts1992/Ukpga\\_19920005\\_en\\_13.htm#mdiv161](http://www.hmso.gov.uk/acts/acts1992/Ukpga_19920005_en_13.htm#mdiv161)

8. Employment Agencies Act 1973 (Chapter 35).

#### Falkland Islands

9. Employment Protection Ordinance (No. 8 of 1989).
10. Labour (Minimum Wage) Ordinance 1942 (Cap. 35).

#### Gibraltar

11. Regulation of Wages and Conditions of Employment Ordinance (Cap. 139), as amended up to 1976.

#### Guernsey

12. Conditions of Employment (Guernsey) Act, 1985, as amended up to 1994.
13. Preferred Debts (Guernsey) Act, 1983.

#### Isle of Man

14. Employment Act 1991 as amended up to 1996.
15. Minimum Wage Act 2001.
16. Minimum Wage Regulations 2001.

#### Jersey

17. Payment of Wages (Jersey) Act 1962 as amended up to 1998.  
<http://www.jerseylegalinfo.je/Law/LawsInForce/htm>
18. Payment of Wages (Jersey) Regulations 1977.
19. Terms of Employment (Jersey) Regulations 2001.
20. Bankruptcy (Desastre) (Jersey) Act 1990, as amended up to 2000.

#### Montserrat

21. Protection of Wages Ordinance (No. 6 of 1962).

#### Virgin Islands

22. Labour Code Ordinance, 1975 (Cap. 293).

### United States

#### Federal legislation

1. Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq.)  
<http://www.dol.gov/esa/regs/statutes/whd/0002.fair.pdf>
2. Code of Federal Regulations, title 29, Chapter V, Parts 516, 531, 870.  
[http://www.dol.gov/dol/allcfr/ESA/Title\\_29/Chapter\\_V.htm](http://www.dol.gov/dol/allcfr/ESA/Title_29/Chapter_V.htm)

3. Consumer Credit Protection Act, title III, restriction on garnishment (15 U.S.C. 1671, et seq.).

<http://www.dol.gov/esa/regs/statutes/whd/garn01.pdf>

#### States

##### Alabama

4. Code of Alabama, title 25, Chapter 4.

##### Alaska

5. Alaska Statutes, title 23, Chapter 10.  
<http://www.touchngo.com/lglcntr/akstats/Statutes/Title23.htm>
6. Alaska Administrative Code, title 8, Chapter 25.  
<http://touchngo.com/lglcntr/akstats/AAC/Title08/Chapter025.htm>

##### Arizona

7. Arizona Revised Statutes, title 23, Chapter 2, article 7.  
<http://www.azleg.state.az.us/ars/23/title23.htm>

##### Arkansas

8. Arkansas Code, title 11, Chapter 4; title 16.  
[http://www.accessarkansas.org/labor/laws\\_regs/index.html](http://www.accessarkansas.org/labor/laws_regs/index.html)

##### California

9. California Labor Code, Division 2, Part 1, Chapters 1 and 2.  
<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=lab&codebody=&hits=20>

##### Colorado

10. Colorado Revised Statutes, title 8, article 4.  
<http://www.coworkforce.com/LAB/wagelaw.pdf>

##### Connecticut

11. General Statutes of Connecticut, title 31, Chapter 558.  
<http://www.cga.state.ct.us/2001/pub/Chap558.htm>
12. Administrative Regulations, sections 31-60-3 and 31-60-12.  
<http://www.ctdol.state.ct.us/wgwkstnd/adminregs.htm>

##### Delaware

13. Delaware Code, title 19, Chapter 11, sections 1101 to 1115.  
<http://www.delcode.state.de.us/title19/chapter11.htm#TopOfPage>

##### District of Columbia

14. District of Columbia Official Code, division 5, title 32, Chapter 13.  
<http://dccode.westgroup.com/home/dccodes/default.wl>

##### Georgia

15. Georgia Code, title 34, Chapters 2 and 4 to 6.  
<http://www.state.ga.us/cgi-bin/pub/ocode/ocgsearch?number=34&format=full>

##### Hawaii

16. Hawaii Revised Statutes, Chapters 387, 388, 652.  
<http://www.capitol.hawaii.gov/site1/docs/docs.asp?press1=docs>

## Idaho

17. Idaho Statutes, title 44, Chapters 9, 20, 24; title 45.  
<http://www3.state.id.us/idstat/TOC/44FTOC.html>

## Illinois

18. Illinois Compiled Statutes, Chapter 820, sub-Chapter 115, sections 1 to 15.  
<http://www.legis.state.il.us/ilcs/ch820/ch820act115.htm>

## Indiana

19. Indiana Code, title 22, article 2, Chapters 4 to 12.  
<http://www.in.gov/legislative/ic/code/title22/ar2/>

## Iowa

20. Code of Iowa, Chapters 91 and 91A.  
<http://www.iowaworkforce.org/labor/laborecard/laws/>

## Kansas

21. Kansas Statutes, Chapter 44, article 3, sections 312 to 327.  
<http://www.hr.state.ks.us/home-html/wagepay.htm>

## Kentucky

22. Kentucky Revised Statutes, title 27, Chapter 337.  
<http://www.lrc.state.ky.us/KRS/337-00/CHAPTER.HTM>
23. Kentucky Administrative Regulations, title 803, Chapter 1.  
<http://www.lrc.state.ky.us/KAR/title803.htm>

## Louisiana

24. Louisiana Revised Statutes, title 23.  
<http://www.legis.state.la.us/>

## Maine

25. Maine Revised Statutes, title 26, Chapter 7, sections 621 to 635.  
<http://janus.state.me.us/legis/statutes/26/title26ch7sec0.html>

## Maryland

26. Maryland Code, Labor and Employment, title 3, subtitles 4 and 5.  
<http://www.dllr.state.md.us/labor/wagepay/wpgenl.htm>

## Massachusetts

27. General Laws of Massachusetts, title 21, Chapter 149.  
<http://www.state.ma.us/legis/laws/mgl/gl-149-toc.htm>

## Michigan

28. Michigan Compiled Laws, Chapter 408.  
<http://michiganlegislature.org/law/mileg.asp?page=getObject&objName=mcl-chap408>

## Minnesota

29. Minnesota Statutes, Chapter 181.  
<http://www.revisor.leg.state.mn.us/stats/181/>
30. Minnesota Rules, Chapter 5200.  
<http://www.revisor.leg.state.mn.us/arule/5200/>

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**Mississippi**

31. Mississippi Code, title 71, Chapter 1.  
<http://www.mscode.com/free/statutes/71/index.htm>

**Missouri**

32. Missouri Revised Statutes, title 18, Chapters 290 and 291.  
<http://www.moga.state.mo.us/STATUTES/C290.HTM>

**Montana**

33. Montana Code Annotated, title 39, Chapter 3.  
[http://data.opi.state.mt.us/bills/mca\\_toc/39.htm](http://data.opi.state.mt.us/bills/mca_toc/39.htm)

**Nebraska**

34. Nebraska Revised Statutes, Chapter 48, sections 224, 1201 to 1209 and 1228 to 1232; Chapter 25, section 1558.  
<http://www.dol.state.ne.us/nwd/center.cfm?PRICAT=4&SUBCAT=4G>

**Nevada**

35. Nevada Revised Statutes, title 53, Chapter 608.  
<http://www.leg.state.nv.us/NRS/NRS-608.html>

**New Hampshire**

36. Revised Statutes, title 23, Chapter 275.  
<http://www.gencourt.state.nh.us/rsa/html/indexes/275.html>

**New Jersey**

37. New Jersey Statutes Annotated, title 34, Chapter 11.  
<http://www.state.nj.us/labor/lasse/select.html>

**New Mexico**

38. New Mexico Statutes Annotated, Chapter 14, article 13; Chapter 35, article 12; Chapter 50, article 4.  
<http://198.187.128.12/newmexico/lpext.dll?f=templates&fn=fs-main.htm&2.0>

**New York**

39. New York State Consolidated Law, Chapter 31, articles 6 to 8, sections 190 to 199-a, 219, 221.  
<http://assembly.state.ny.us/leg/?cl=54>

**North Carolina**

40. North Carolina General Statutes, Chapter 95, articles 1 and 2A.  
<http://www.ncga.state.nc.us/gascripts/Statutes/StatutesTOC.pl?0095>
41. North Carolina Administrative Rules, title 13, Chapter 12.  
[http://ncrules.state.nc.us/ncadministrativ\\_/title13labor\\_/chapter12\\_/default.htm](http://ncrules.state.nc.us/ncadministrativ_/title13labor_/chapter12_/default.htm)

**North Dakota**

42. North Dakota Century Code, title 34, Chapters 1 to 6 and 14.  
<http://www.state.nd.us/lr/assembly/57-2001/cencode/CCT34.pdf>

## Ohio

43. Ohio Revised Code, title 41, Chapters 4111, 4113.  
<http://onlinedocs.andersonpublishing.com/revisedcode/>

## Oklahoma

44. Oklahoma Statutes, title 40.

## Oregon

45. Oregon Revised Statutes, Chapter 652.  
<http://www.leg.state.or.us/ors/652.html>

## Pennsylvania

46. Pennsylvania Code, title 34, Chapters 9 and 231.  
<http://www.pacode.com/secure/data/034/034toc.html>

## Rhode Island

47. Rhode Island General Laws, title 28, Chapters 28-1, 28-6.3, 28-12, 28-14, 28-15 and 28-16.  
<http://www.rilin.state.ri.us/Statutes/TITLE28/>

## South Carolina

48. South Carolina Code of Laws, title 41, Chapters 1, 3 and 10.  
<http://www.lpittr.state.sc.us/code/titl41.htm>

## South Dakota

49. South Dakota Statutes, title 60, Chapters 5 and 11; title 62  
<http://legis.state.sd.us/statutes/index.cfm?FuseAction=StatutesTitleList>

## Tennessee

50. Tennessee Code, title 50, Chapters 2 and 4.  
<http://www.tennesseeanytime.org/main/government/laws.html>

## Texas

51. Texas Statutes, Labor Code, title 2, Chapters 52, 61 and 62.  
<http://www.capitol.state.tx.us/statutes/latoc.html>

## Utah

52. Utah Code, title 34, Chapters 26, 28, 32 and 40.  
<http://www.le.state.ut.us/~code/TITLE34/TITLE34.htm>

## Vermont

53. Vermont Statutes, title 21, Chapter 5.  
<http://www.leg.state.vt.us/statutes/sections.cfm?Title=21&Chapter=005>

## Virginia

54. Code of Virginia, title 40.1, Chapter 3.  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC4001000>

## Washington

55. Revised Code of Washington, title 49, Chapters 12, 46, 48, 52 and 56.  
<http://www.leg.wa.gov/rcw/index.cfm?fuseaction=title&title=49>

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56. Washington Administrative Code, title 296, Chapter 126.  
<http://www.leg.wa.gov/wac/index.cfm?fuseaction=chapterdigest&chapter=296-126>

West Virginia

57. West Virginia Code, Chapter 21, articles 5 and 5C.  
<http://www.state.wv.us/labor/wage/laws.html>

Wisconsin

58. Wisconsin Statutes, Chapter 109.  
<http://www.legis.state.wi.us/rsb/Statutes.html>

Wyoming

59. Wyoming Statutes, title 27, Chapter 4.  
<http://legisweb.state.wy.us/statutes/sub27.htm>

*Uruguay*

1. Constitution of 1967, as amended up to 8 December 1996.  
<http://www.parlamento.gub.uy/Constituciones/Const997.htm>
2. Act No. 10.449 of 12 November 1943 on wages board, as amended.
3. Act No. 14.785 of 9 May 1978 on rural workers.
4. Decree No. 462/970 of 24 September 1970.
5. Decree No. 337/092 of 17 July 1992, as amended by Decree No. 20/996 of 24 January 1996.
6. Act No. 15.319 of 30 August 1982 on social housing funds.
7. Act No. 15.611 of 10 August 1984 authorizing the creation of administrator societies of complementary pension funds with financial autonomy.
8. Act No. 11.180 of 17 December 1948 on transport cooperatives.
9. Act No. 14.518 of 10 May 1976 on milk industry cooperatives.
10. Act No. 14.621 of 28 December 1976 on social security cooperatives.
11. Act No. 3.299 of 25 June 1906 on protection of wages.
12. Act No. 15.982 of 18 October 1988 on general procedural code.
13. Act No. 9.342 of 6 April 1934 on children's code.
14. Act No. 14.188 of 5 April 1974 establishing new labour courts.
15. Act No. 917 of 23 January 1868 to issue the Civil Code, as amended.
16. Decree No. 817 of 27 May 1861 to issue the Commercial Code, as amended.
17. Act No. 15.903 of 10 November 1987 on rendering of accounts and budget balance.
18. Act No. 16.244 of 30 March 1992 on the social security bank.

*Venezuela*

1. Organic Labour Act of 27 November 1990, as amended on 19 June 1997.  
<http://www.tsj.gov.ve/legislacion/lot.html>
2. Regulations of the Organic Labour Act, Decree No. 3235 of 20 January 1999.



3. Civil Code of 26 July 1982.
4. Ministerial decision No. 2921 of 14 April 1998.

#### *Viet Nam*

1. Act of 23 June 1994 establishing the Labour Code.  
[http://www.ivietnam.com/eng/business/LAWS/labourcode/printable/English/labor\\_law/laborcode.htm](http://www.ivietnam.com/eng/business/LAWS/labourcode/printable/English/labor_law/laborcode.htm)
2. Government Decree No. 198/CP of 31 December 1994 on the implementation of a number of sections of the Labour Code with respect to labour contracts.  
<http://www.ivietnam.com/eng/business/LAWS/labourcode/printable/English/regulations/decreel98.htm>
3. Government Decree No. 38/CP of 25 June 1996 on administrative penalties for labour offences.  
<http://www.ivietnam.com/eng/business/LAWS/labourcode/printable/English/regulations/decreel38.htm>
4. Government Decree No. 197/CP of 31 December 1994 on the implementation of a number of sections of the Labour Code with respect to wages.  
<http://www.ivietnam.com/eng/business/LAWS/labourcode/printable/English/regulations/decreel97.htm>

#### *Yemen*

1. Labour Code, Act No. 5 of 1995.
2. Act No. 25 of 1997 amending certain provisions of the Presidential Order to promulgate the Labour Code No. 5 of 1995.

#### *Zambia*

1. Employment Act No. 57 of 1965, as amended up to 1989.
2. Preferential Claims in Bankruptcy Act No. 9 of 1995.
3. Companies Act, as amended last by Act No. 6 of 1995.
4. Maintenance Orders Act (Cap. 219).

#### *Zimbabwe*

1. Labour Relations Act (Chapter 28:01).
2. Insolvency Act (Chapter 303).
3. Collective Bargaining Agreement: Engineering and Iron and Steel Industry, Statutory Instrument 282 of 1990.
4. Collective Bargaining Agreement: Food and Allied Industries (Baking Industry Subsector), Statutory Instrument 216 of 2001.
5. Collective Bargaining Agreement: Cotton Industry, Statutory Instrument 243 of 2001.

## APPENDIX III

### MAIN PROVISIONS OF THE INSTRUMENTS ON PROTECTION OF WAGES

#### **Convention No. 95**

#### **Convention concerning the Protection of Wages**

The General Conference of the International Labour Organisation,  
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and  
Having decided upon the adoption of certain proposals concerning the protection of wages, which is the seventh item on the agenda of the session, and  
Having determined that these proposals shall take the form of an international Convention,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Protection of Wages Convention, 1949:

#### *Article 1*

In this Convention, 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.

#### *Article 2*

1. This Convention applies to all persons to whom wages are paid or payable.
2. The competent authority may, after consultation with the organisations of employers and employed persons directly concerned, if such exist, exclude from the application of all or any of the provisions of the Convention categories of persons whose circumstances and conditions of employment are such that the application to them of all or any of the said provisions would be inappropriate and who are not employed in manual labour or are employed in domestic service or work similar thereto.
3. Each Member shall indicate in its first annual report upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories of persons which it proposes to exclude from the application of all or any of the provisions of the Convention in accordance with the provisions of the

preceding paragraph; no Member shall, after the date of its first annual report, make exclusions except in respect of categories of persons so indicated.

4. Each Member having indicated in its first annual report categories of persons which it proposes to exclude from the application of all or any of the provisions of the Convention shall indicate in subsequent annual reports any categories of persons in respect of which it renounces the right to have recourse to the provisions of paragraph 2 of this Article and any progress which may have been made with a view to the application of the Convention to such categories of persons.

#### *Article 3*

1. Wages payable in money shall be paid only in legal tender, and payment in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, shall be prohibited.

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

#### *Article 4*

1. National laws or regulations, collective agreements or arbitration awards may authorise the partial payment of wages in the form of allowances in kind in industries or occupations in which payment in the form of such allowances is customary or desirable because of the nature of the industry or occupation concerned; the payment of wages in the form of liquor of high alcoholic content or of noxious drugs shall not be permitted in any circumstances.

2. In cases in which partial payment of 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 5*

Wages shall be paid directly to the worker concerned except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award or where the worker concerned has agreed to the contrary.

#### *Article 6*

Employers shall be prohibited from limiting in any manner the freedom of the worker to dispose of his wages.

#### *Article 7*

1. Where works stores for the sale of commodities to the workers are established or services are operated in connection with an undertaking, the workers concerned shall be free from any coercion to make use of such stores or services.

2. Where access to other stores or services is not possible, the competent authority shall take appropriate measures with the object of ensuring that goods are sold and services provided at fair and reasonable prices, or that stores established and services operated by the employer are not operated for the purpose of securing a profit but for the benefit of the workers concerned.

#### *Article 8*

1. Deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award.

2. Workers shall be informed, in the manner deemed most appropriate by the competent authority, of the conditions under which and the extent to which such deductions may be made.

#### *Article 9*

Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited.

#### *Article 10*

1. Wages may be attached or assigned only in a manner and within limits prescribed by national laws or regulations.

2. Wages shall be protected against attachment or assignment to the extent deemed necessary for the maintenance of the worker and his family.

#### *Article 11*

1. In the event of the bankruptcy or judicial liquidation of an undertaking, the workers employed therein shall be treated as privileged creditors either as regards wages due to them for service rendered during such a period prior to the bankruptcy or judicial liquidation as may be prescribed by national laws or regulations, or as regards wages up to a prescribed amount as may be determined by national laws or regulations.

2. Wages constituting a privileged debt shall be paid in full before ordinary creditors may establish any claim to a share of the assets.

3. The relative priority of wages constituting a privileged debt and other privileged debts shall be determined by national laws or regulations.

#### *Article 12*

1. Wages shall be paid regularly. Except where other appropriate arrangements exist which ensure the payment of wages at regular intervals, the intervals for the payment of wages shall be prescribed by national laws or regulations or fixed by collective agreement or arbitration award.

2. Upon the termination of a contract of employment, a final settlement of all wages due shall be effected in accordance with national laws or regulations, collective agreement or arbitration award or, in the absence of any applicable law, regulation,

agreement or award, within a reasonable period of time having regard to the terms of the contract.

### *Article 13*

1. The payment of wages where made in cash shall be made on working days only and at or near the workplace, except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award, or where other arrangements known to the workers concerned are considered more appropriate.

2. Payment of wages in taverns or other similar establishments and, where necessary to prevent abuse, in shops or stores for the retail sale of merchandise and in places of amusement shall be prohibited except in the case of persons employed therein.

### *Article 14*

Where necessary, effective measures shall 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.

### *Article 15*

The laws or regulations giving effect to the provisions of this Convention shall –

- (a) be made available for the information of persons concerned;
- (b) define the persons responsible for compliance therewith;
- (c) prescribe adequate penalties or other appropriate remedies for any violation thereof;
- (d) provide for the maintenance, in all appropriate cases, of adequate records in an approved form and manner.

[...]

## **Recommendation No. 85**

### **Recommendation concerning the Protection of Wages**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the protection of wages, which is the seventh item on the agenda of the session, and

Having decided that these proposals shall take the form of a Recommendation supplementing the Protection of Wages Convention, 1949,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Recommendation, which may be cited as the Protection of Wages Recommendation, 1949:

The Conference recommends that each Member should apply the following provisions as rapidly as national conditions allow and report to the International Labour Office as requested by the Governing Body concerning the measures taken to give effect thereto.

## I. DEDUCTIONS FROM WAGES

1. All necessary measures should be taken to limit deductions from wages to the extent deemed to be necessary to safeguard the maintenance of the worker and his family.

2. (1) Deductions from wages for the reimbursement of loss of or damage to the products, goods or installations of the employer should be authorised only when loss or damage has been caused for which the worker concerned can be clearly shown to be responsible.

(2) The amount of such deductions should be fair and should not exceed the actual amount of the loss or damage.

(3) Before a decision to make such a deduction is taken, the worker concerned should be given a reasonable opportunity to show cause why the deduction should not be made.

3. Appropriate measures should be taken to limit deductions from wages in respect of tools, materials or equipment supplied by the employer to cases in which such deductions –

- (a) are a recognised custom of the trade or occupation concerned; or
- (b) are provided for by collective agreement or arbitration award; or
- (c) are otherwise authorised by a procedure recognised by national laws or regulations.

## II. PERIODICITY OF WAGE PAYMENTS

4. The maximum intervals for the payment of wages should ensure that wages are paid –

- (a) not less often than twice a month at intervals not exceeding sixteen days in the case of workers whose wages are calculated by the hour, day or week; and
- (b) not less often than once a month in the case of employed persons whose remuneration is fixed on a monthly or annual basis.

5. (1) In the case of workers whose wages are calculated on a piece-work or output basis, the maximum intervals for the payment of wages should, so far as possible, be so fixed as to ensure that wages are paid not less often than twice a month at intervals not exceeding sixteen days.

(2) In the case of workers employed to perform a task the completion of which requires more than a fortnight, and in respect of whom intervals for the payment of wages are not otherwise fixed by collective agreement or arbitration award, appropriate measures should be taken to ensure –

- (a) that payments are made on account, not less often than twice a month at intervals not exceeding sixteen days, in proportion to the amount of work completed; and
- (b) that final settlement is made within a fortnight of the completion of the task.

### III. NOTIFICATION TO WORKERS OF WAGE CONDITIONS

6. The details of the wages conditions which should be brought to the knowledge of the workers should include, wherever appropriate, particulars concerning –

- (a) the rates of wages payable;
- (b) the method of calculation;
- (c) the periodicity of wage payments;
- (d) the place of payment; and
- (e) the conditions under which deductions may be made.

### IV. WAGES STATEMENTS AND PAYROLL RECORDS

7. In all appropriate cases, workers should be informed, with each payment of wages, of the following particulars relating to the pay period concerned, in so far as such particulars may be subject to change:

- (a) the gross amount of wages earned;
- (b) any deduction which may have been made, including the reasons therefor and the amount thereof; and
- (c) the net amount of wages due.

8. Employers should be required in appropriate cases to maintain records showing, in respect of each worker employed, the particulars specified in the preceding Paragraph.

### V. ASSOCIATION OF WORKERS IN THE ADMINISTRATION OF WORKS STORES

9. Appropriate measures should be taken to encourage arrangements for the association of representatives of the workers concerned, and more particularly members of works welfare committees or similar bodies where such bodies exist, in the general administration of works stores or similar services established in connection with an undertaking for the sale of commodities or provision of services to the workers thereof.



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