

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.¹

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

¹ 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*,² *Malta*³ and the *Russian Federation*,⁴ “wages” means any remuneration or earnings, including basic wages, wage supplements, bonuses, premiums and other payments. In *Côte d’Ivoire*,⁵ *Gabon*⁶ and *Niger*,⁷ 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*,⁸ *Lebanon*⁹ and *Senegal*,¹⁰ 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*,¹¹ *Nicaragua*¹² and *Venezuela*,¹³ “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*,¹⁴ *Kuwait*¹⁵ and the *Syrian Arab Republic*,¹⁶ “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,¹⁷ several state laws define “wages” as any non-discretionary compensation due to an employee in return for labour or services

² (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.

³ (1), s. 2(1).

⁴ (1), s. 129.

⁵ (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.

⁶ (1), s. 18.

⁷ (1), s. 147.

⁸ (1), s. 116.

⁹ (1), s. 57.

¹⁰ (1), s. L.118.

¹¹ (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).

¹² (2), ss. 81, 84.

¹³ (1), s. 133.

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

¹⁵ (1), s. 28.

¹⁶ (1), s. 3.

¹⁷ 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,¹⁸ “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.¹⁹

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.

¹⁸ (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.

¹⁹ 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*,²⁰ *Colombia*²¹ and *Honduras*,²² social security benefits are not deemed to be wages. In the *Czech Republic*²³ and *Slovakia*,²⁴ 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*²⁵ and the *Democratic Republic of the Congo*,²⁶ health care, statutory family allowance and travelling expenses are not regarded as elements of remuneration. In the *Bahamas*,²⁷ wages include every form of remuneration for work performed, except tips, bonuses and other gratuities, while in *Congo*,²⁸ wages include basic remuneration, premiums, allowances and indemnities of any nature, except for compensation in the case of dismissal. In *Malaysia*,²⁹ “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;

²⁰ (1), ss. 103, 103bis, 105.

²¹ (1), ss. 127, 128.

²² (2), ss. 360 to 362.

²³ (2), s. 4(2); (4), s. 3(2).

²⁴ (1), s. 118(2).

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

²⁶ (1), s. 4(h).

²⁷ (4), s. 2(1).

²⁸ (2), s. 91.

²⁹ (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*,³⁰ remuneration comprises all emoluments earned by a worker except for money due as a share of profits, while in *Namibia*,³¹ 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*,³² only payments for overtime work or other incidental purposes are not deemed to fall within the definition of wages, whereas in *Sudan*,³³ 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*,³⁴ 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*³⁵ 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

³⁰ (1), s. 2.

³¹ (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.

³² (1), s. 2.

³³ (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.

³⁴ (1), s. 134-2.

³⁵ (1), s. 258(3).

the case, for example, in *Cameroon*,³⁶ *Nigeria*³⁷ and *Paraguay*.³⁸ In the case of the *Philippines*,³⁹ 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*,⁴⁰ 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*,⁴¹ 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*,⁴² 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,

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

³⁷ (1), s. 91.

³⁸ (1), ss. 227, 231.

³⁹ (1), s. 97(f).

⁴⁰ 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.

⁴¹ (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.

⁴² (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.⁴³

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”.⁴⁴

⁴³ 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.

⁴⁴ 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.⁴⁵ 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.⁴⁶

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.

⁴⁵ 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.

⁴⁶ 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*⁴⁷ and *Swaziland*,⁴⁸ 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*,⁴⁹ 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*,⁵⁰ *Slovenia*,⁵¹ *Tajikistan*⁵² and *Tunisia*.⁵³ Similarly, in the *Republic of Moldova*,⁵⁴ 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*,⁵⁵ *Gabon*⁵⁶ and *Senegal*,⁵⁷ 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.

⁴⁷ (2), s. 7.

⁴⁸ (1), s. 63.

⁴⁹ (1), s. 74.

⁵⁰ (1), s. 8.

⁵¹ (1), ss. 2, 3.

⁵² (1), s. 6; (3), s. 4.

⁵³ (1), s. 1.

⁵⁴ (2), s. 1(1).

⁵⁵ (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.

⁵⁶ (1), s. 1.

⁵⁷ (1), s. L.2.

Brazil,⁵⁸ *Guinea*,⁵⁹ *Hungary*⁶⁰ and *Islamic Republic of Iran*.⁶¹ 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*,⁶² *Cameroon*⁶³ and *Uganda*,⁶⁴ 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*⁶⁵ and *Egypt*,⁶⁶ 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*⁶⁷ and *Zambia*,⁶⁸ 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.

⁵⁸ (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).

⁵⁹ (1), s. 1.

⁶⁰ (1), s. 2(1).

⁶¹ (1), s. 188.

⁶² (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).

⁶³ (1), s. 1(3).

⁶⁴ (1), s. 5(2), (3).

⁶⁵ (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.

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

⁶⁷ (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.

⁶⁸ (1), s. 2(1). See also *Namibia* (1), s. 2(2)(a).

This is the case, for example, in *Argentina*,⁶⁹ *Egypt*,⁷⁰ *Philippines*⁷¹ and *Venezuela*.⁷² This is also the position in *Kuwait*⁷³ and *Qatar*,⁷⁴ 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*,⁷⁵ 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*⁷⁶ and *Spain*,⁷⁷ persons employed in family enterprises are not subject to the provisions of the Labour Code. This is also the position in *Bahrain*⁷⁸ and *Saudi Arabia*,⁷⁹ 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*⁸⁰ and the *United Arab Emirates*,⁸¹ 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*⁸² with respect to small firms

⁶⁹ (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.

⁷⁰ (1), s. 3(b).

⁷¹ (1), s. 98.

⁷² (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.

⁷³ (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.

⁷⁴ (1), s. 6(5).

⁷⁵ (1), ss. 2, 61(1), 63.

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

⁷⁷ (1), s. 3(e).

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

⁷⁹ (1), s. 3(a).

⁸⁰ (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.

⁸¹ (1), s. 3(f).

⁸² (1), s. 6(6).

employing fewer than six workers, while in the case of the *Islamic Republic of Iran*,⁸³ 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*,⁸⁴ 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*,⁸⁵ only manual workers, including domestic servants, transport workers and seafarers, are covered by the legislation giving effect to the Convention. In *Norway*,⁸⁶ 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*⁸⁷ and *Kuwait*,⁸⁸ 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*⁸⁹ and *Yemen*.⁹⁰ Similar regulations are found in *Qatar*⁹¹ and the United Arab Emirates,⁹² 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*,⁹³ 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.

⁸³ (1), s. 191.

⁸⁴ (1), s. 2.

⁸⁵ (1), s. 2 and First Schedule, s. 2.

⁸⁶ (1), ss. 2, 3, 5, 6.

⁸⁷ (1), s. 2(4).

⁸⁸ (1), s. 2(g).

⁸⁹ (1), s. 3(i).

⁹⁰ (1), s. 3(2)(g).

⁹¹ (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).

⁹² (1), s. 3(g).

⁹³ (1), s. 91.

60. Some countries exclude high-salaried non-manual workers. This is the case, for instance, in *Malaysia*,⁹⁴ 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*,⁹⁵ corporate executives are excluded from the application of the national legislation concerning wages.

61. In *Lebanon*⁹⁶ and *Libyan Arab Jamahiriya*,⁹⁷ 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 Arabia⁹⁸ and *Sudan*,⁹⁹ 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*¹⁰⁰ and *Bolivia*,¹⁰¹ while in the *Islamic Republic of Iran*,¹⁰² 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*.¹⁰³

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

⁹⁴ (1), s. 2 and First Schedule, s. 1. See also Myanmar (1), s. 1(6).

⁹⁵ (1), s. 3(c).

⁹⁶ (1), s. 7(2).

⁹⁷ (1), s. 1(c)(i).

⁹⁸ (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).

⁹⁹ (1), s. 3(g).

¹⁰⁰ (1), s. 2(c).

¹⁰¹ (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.

¹⁰² (1), s. 189.

¹⁰³ (1), s. 3.

authorities in this respect. The Government of Seychelles,¹⁰⁴ 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.

¹⁰⁴ (1), s. 4(2).