

## 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

<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.