

CHAPTER VI

PERIODICITY, TIME AND PLACE OF WAGE PAYMENT

1. The regular payment of wages

354. Article 12, paragraph 1, of Convention No. 95 provides that wages shall be paid regularly and that, except where other appropriate arrangements exist which ensure the payment of wages at regular intervals, the intervals for the payment of wages shall be prescribed by national laws or regulations or fixed by collective agreement or arbitration award. Paragraph 4 of the Recommendation specifies that the maximum intervals for the payment of wages should ensure that wages are paid not less than twice a month at intervals not exceeding 16 days in the case of workers whose wages are calculated by the hour, day or week, and not less than once a month in the case of employed persons whose remuneration is fixed on a monthly or annual basis.¹

355. The rationale underlying these provisions is to discourage long wage payment intervals and thus to minimize the likelihood of indebtedness among the workers. In fact, the quintessence of wage protection is the assurance of a periodic payment allowing the worker to organize his everyday life with a reasonable degree of certainty and security. Inversely, the delayed payment of wages or the accumulation of wage debts clearly contravene the letter and the spirit of the Convention and render the application of most of its other provisions simply meaningless. In the following paragraphs, the Committee will first look into the current context with respect to some of the most traumatic and demoralizing experiences of wage arrears, focusing especially to the countries of

¹ The initial Office proposal required “wages to be paid regularly at such intervals as will minimise the likelihood of indebtedness among the workers”. This provision was amended at the first Conference discussion to make reference to such intervals as are determined by law or collective agreement; see ILC, 31st Session, 1948, *Record of Proceedings*, pp. 462-463. At the second Conference discussion, the deletion of Paragraph 4 of the Recommendation was proposed on the grounds that it was inappropriate to indicate in an international instrument the nature of provisions to be included in collective agreements, and also that the weekly or semi-monthly pay periods referred to in the Paragraph were not customary in certain parts of the world. This amendment was finally rejected, while another amendment seeking to render the expression “twice a month” sufficiently precise by adding the words “at intervals not exceeding sixteen days” was adopted; see ILC, 32nd Session, 1949, *Record of Proceedings*, p. 513.

Central and Eastern Europe, and then review the national law and practice with respect to wage intervals.

1.1. Deferred payment of wages

356. Over the past five years, practically all the observations formulated by the Committee in respect of Convention No. 95 have referred to problems of wage arrears and the failure of governments to ensure the regular payment of wages in accordance with Article 12, paragraph 1, of the Convention. Similarly, for the past ten years, the Conference Committee on the Application of Conventions and Recommendations (CCACR) has regularly examined individual cases relating to grave situations of wage arrears. In addition, in the past decade, the ILO Governing Body has dealt with nine representations made under article 24 of the ILO Constitution alleging non-observance of Convention No. 95, mostly in respect of the delayed or non-payment of wages.²

357. The accumulation of huge amounts of wage arrears and unpaid wages has become one of the most alarming and persisting phenomena of the post-communist transition of many Central and Eastern European countries towards market-based economies. The pattern of wage arrears experienced previously was generally confined to certain industries or areas, and was often related to companies facing occasional liquidity constraints or problems of insolvency, and sectors affected by conflicts, crises or adverse economic conjuncture either domestically or internationally. By contrast, what in Central and Eastern Europe has been labelled the “wage crisis” over the past ten years is

² See, in reverse chronological order, the representation alleging non-observance by the *Czech Republic* of Convention No. 95 made by the Czech-Moravian Confederation of Trade Unions, March 2000, GB.277/18/2; representation alleging non-observance by the *Republic of Moldova* of Convention No. 95 made by the General Federation of Trade Unions of the Republic of Moldova, November 1999, GB.276/17/2; representation alleging non-observance by the *Russian Federation* of Convention No. 95 made by Education International and the Education and Science Employees’ Union of Russia, March 1997, GB.268/15/3 and GB.270/15/5; representation alleging non-observance by *Venezuela* of Convention No. 95 made jointly by several Venezuelan trade unions, November 1996, GB 267/16/1 and GB.268/14/9; representation alleging non-observance by *Congo* of Convention No. 95 made by the Trade Union Confederation of Congo Workers, March 1996, GB.265/13/1 and GB.268/14/6; representation alleging non-observance by *Nicaragua* of Convention No. 95 made by the Latin American Central of Workers, November 1994, GB.261/14/11 and GB.264/16/3; representation alleging non-observance by *Gabon* of Convention No. 95 made by the Federation of Miners, Oil and Other Workers and the International Organization of Energy and Mines, November 1994, GB.261/14/10; representation alleging non-observance by *Congo* of Convention No. 95 made by the International Organization of Energy and Mines, November 1994, GB.261/14/8 and GB.265/12/6; representation alleging non-observance by *France* of Convention No. 95 made by the General Confederation of Labour “*Force Ouvrière*”, March 1994, GB.259/15/30.

spread across all branches of economic activity, including the energy sector, mining, manufacturing and agriculture, and has proven particularly tenacious over time, as if it is part of a rooted “culture of non-payment”. In the *Russian Federation*, according to latest information communicated by the Government, wage arrears stood at 29.9 billion roubles (around US\$1 billion), affecting sectors such as industry, agriculture, construction, public utilities and transport. In *Ukraine*, according to a recent ILO study, 69 per cent of all factories reported that they had great difficulties in paying wages. Three out of every five factories, or 59 per cent, had not paid contractually agreed wages in all or in part, and on average they had not paid wages for almost six weeks.³ In the *Republic of Moldova*, as another ILO study reveals, the delay observed in the payment of wages ranges from two months to two years, with most enterprises resorting to barter by replacing cash wages with manufactured products.⁴ Research reports further show that in *Bulgaria* the volume of wage debts in non-state owned enterprises increased over seven times in the period 1991-96 and almost doubled from 1997 to 1999, while unpaid/delayed wages in the public sector now represent 2.5 per cent of the country’s GDP.⁵ The wage arrears of state enterprises in *Belarus* rose from US\$2 million in 1994 to US\$42 million in 1996.⁶ Similarly, in *Kazakhstan*, there has been a massive build-up of payment arrears, with the total of inter-enterprise arrears, including wage debts, standing at 38 per cent of GDP in 1996.⁷ Significant wage and pension arrears are also reported in other countries, such as *Tajikistan*, *Turkmenistan* and *Uzbekistan*.⁸

358. Experts tend to attribute the problem to several factors, such as the collapse of demand, the decline of output and employment in large enterprises, the poor supervision of managerial conduct and lax government controls in state-owned firms, heavy taxation, and strict anti-inflationary monetary policies. Whatever the intricate causes of wage arrears, it is clear that the practice of

³ See Guy Standing and László Zsoldos, *Worker insecurities in Ukrainian industry: The 2000 ULFS*, ILO, 2001, pp. 36-45. According to information provided to the Conference Committee on the Application of Standards in 2001, the total amount of wage arrears as of May 2001 was 1.3 times the monthly wage mass of all workers and affected more than 5 million workers; see ILC, 89th Session, 2001, *Record of Proceedings*, p. 19 Part 2/59.

⁴ See *République de Moldova: Analyse de la flexibilité et de la sécurité de la main-d'oeuvre dans les entreprises*, ILO, Oct. 2001 (in print).

⁵ See Vassil Tsanov and Temenuzka Zlatanova, “Non-payment of wages in Bulgaria”, Research paper presented at the Subregional Tripartite Conference on the Protection of Wages Including Wage-Guarantee Funds in Central and Eastern Europe, Sofia, 9-10 November 2001 (unpublished).

⁶ See *Belarus: Prices, markets and enterprise reform*, World Bank, 1997, p. 59.

⁷ See *Kazakhstan: Living standards during the transition*, World Bank, 1998, p. 4.

⁸ See Emine Gürgen et al., *Economic reforms in Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan and Uzbekistan*, International Monetary Fund, 1999, p. 21.

delaying, diverting or otherwise withholding wage payment is part of a vicious circle that breeds the parallel economy, black-market activities and corruption, while carrying serious social consequences such as malnutrition, diseases and dropping out of school, because of the growing impoverishment of the population. All available surveys point to a marked deterioration of living standards as a result of the persistent non-payment of wages. In most cases, household consumption has declined significantly, life expectancy has dropped dramatically, especially for men, morbidity rates have increased and poverty indicators have generally worsened. The population of *Ukraine* has shrunk by more than 2 million people in less than a decade in the wake of a sharp decline in male life expectancy attributed to the stress of adjustment and income insecurity among young and middle-aged men. Similarly, in the *Russian Federation*, male life expectancy fell dramatically between 1992 and 1994 from 62 to 57 years of age, with the evidence showing that the rise in male middle-aged death rates are primarily alcohol-related.⁹

359. Another dimension of the problem is the very low level of wages, which mean that even many of those who receive their wages in full and on time are not much better off than those who are not paid at all, since wages are so low and make a relatively small contribution to the subsistence of households. Analysts have noticed a mass return to subsistence agriculture – in 1996 about 90 per cent of potatoes and 80 per cent of vegetables consumed in the *Russian Federation* were home-grown – as a result of the inadequate levels of cash income and increasing demonetization.¹⁰ The problem of the non-payment of wages therefore only serves to magnify the equally disturbing trend of derisive wage levels practised in most transition economies.¹¹ In *Bulgaria*, where the fall in real wages has been particularly dramatic, by early 1998 real average wages had fallen to only 35 per cent of their 1990 level.¹²

⁹ See Simon Clarke, "Poverty in Russia", in *Problems of Economic Transition*, Vol. 42, Sep. 1999, p. 13; Guy Standing, *Global labour flexibility – Seeking distributive justice*, 1999, p. 250; Guy Standing and László Zsoldos, *Worker insecurities in Ukrainian industry: The 2000 ULFS*, ILO, 2001, p. 1.

¹⁰ It is indicative that the statutory minimum wage in the Russian Federation in 1996 was \$13 per month, and 64 per cent of households reported a total income per head below the official subsistence minimum of \$66 per month; see Simon Clarke, "Trade unions and the non-payment of wages in Russia", in *International Journal of Manpower*, Vol. 19, 1998, p. 84.

¹¹ It has been estimated, for instance, that in the Russian Federation, even if they were paid their wages in full, fewer than 25 per cent of two-earner families would earn enough to support two children above the minimum subsistence level; see Simon Clarke, "Poverty in Russia", in *Problems of Economic Transition*, Vol. 42, Sep. 1999, p. 23.

¹² See Vassil Tzanov and Daniel Vaughan-Whitehead, *Republic of Bulgaria: For a new incomes policy and strategy*, ILO, 1998, p. 11.

6.1. Breaking the circle of non-payment

The first priority is undoubtedly to restore a monetary economy and to halt as soon as possible the expanding barter trade. The vicious circle of inter-enterprise debts must also be interrupted. Even if the barter process might appear as a good solution in the short term, its generalization to the whole economy could lead to uncontrollable movements in which workers are generally the main victims. Priority should also be given to the payment of wages, and should be supported by the banking system, the whole process being closely monitored by the government. Bankruptcy decisions should also be taken in a more systematic way by the government – and also supported by the trade unions – in unprofitable enterprises not paying wages and social contributions for months, where restructuring measures could not much help to improve results. [...] It is also important to reduce taxation in order to help enterprises to increase their capital assets and improve their production capacity. This would put employers in a better position also to pay taxes and social contributions. [...] This series of measures clearly requires a multi-stranded action programme on the part of authorities. More labour inspection is also needed. In many regions of the Russian Federation and Ukraine teams of inspectors have been created in order to analyse in detail enterprise conditions and responsibilities. Legislative action is also needed on several fronts: the prioritization of wage payment, the responsibility of employers, monopolies, indebtedness and the banking system, bankruptcy, etc. The trade unions have a crucial role to play in pressuring governments to be more active on this issue and insisting on the full payment of wages arrears. Tripartite discussions should also be promoted between the government and social partners on the non-payment of wages. It is worth noting that whenever this serious problem has finally induced the authorities to take action, the resulting measures have almost always been taken unilaterally: the trade unions and employers' organizations are usually not consulted. Considering the extent of this phenomenon in some countries, it is time to involve all the social partners more actively in this process.

Source: Daniel Vaughan-Whitehead: "Wage policy reforms in Central and Eastern Europe: A first assessment (1990-96)", in Daniel Vaughan-Whitehead (ed.): *Paying the price – The wage crisis in Central and Eastern Europe*, ILO, 1998, pp. 64-65.

360. However, the problem of the non-payment or delayed payment of wages is not limited to the transition countries in Central and Eastern Europe or to the former Soviet Republics. The public attention paid over the past decade to the difficulties encountered by these countries should not distract from the fact that similar wage payment problems plague national economies in other regions of the world, notably in Africa and Latin America. The information available shows that the situation is particularly serious in *Congo*, where wage arrears have reached 220 billion CFA francs and the delay in wage payment varies from 18 to 22 months.¹³ In the *Central African Republic*, employees in the public

¹³ It may be recalled that in 1995 the Trade Union Confederation of Congo Workers (CSTC) made a representation under article 24 of the Constitution alleging non-observance by *Congo* of Convention No. 95 on account of the accumulated wage arrears in the public sector and

sector reportedly receive their salaries with a 16-month delay, while municipal workers in Bangui have not been paid for the last 26 months.¹⁴ Furthermore, the Committee has received comments from the Zambia Congress of Trade Unions (ZCTU) pointing out that wages have not been paid in most local authorities for periods ranging from two to 19 months, affecting close to 10,000 workers.¹⁵ According to other accounts, in *Chad*, three months' wages are owed to public employees working in the health care and education sectors, while in *Comoros*, according to information communicated by the Union of Autonomous Comoran Workers' Organizations (USATC), the pay of public employees in certain areas is 20 and even 30 months in arrears.¹⁶ As regards the situation in Latin America, there have been numerous observations by workers' organizations alleging abuses in the payment of wages in *Argentina*,¹⁷ *Colombia*,¹⁸ *Costa Rica*¹⁹ and the *Dominican Republic*,²⁰ while in the case of *Bolivia*²¹ and *Brazil*²² slave labour practices have been denounced, including the non-payment of wages, especially in rural areas.

361. Occasionally, wage debts are settled by offering consumer goods or promissory notes in lieu of cash to the workers concerned. According to an ILO study carried out in five newly independent countries of the former Soviet Union, the proportion of respondents reporting wage difficulties ranged from a

the dismissal of thousands of civil service workers without a final settlement of their wages or payment of the indemnities for dismissal. In its conclusions, the tripartite committee set up to examine the representation recalled that a government that ratifies the Convention is required not only to ensure that it is applied by private enterprises, but also to apply it scrupulously to workers who are directly dependent on the State; see GB.268/14/6, paras. 19, 22.

¹⁴ The Committee has been noting the observations made by the Democratic Organization of African Workers' Trade Union (DOAWTU) to this effect and has been calling upon the Government to provide detailed information on the actual size of the problem; see RCE 2002, 322 (*Central African Republic*) and RCE 2000, 212 (*Central African Republic*).

¹⁵ See RCE 1999, 320 (*Zambia*) and RCE 2002, 347 (*Zambia*).

¹⁶ See RCE 1999, 312 (*Comoros*); RCE 2001, 353 (*Comoros*); RCE 2002, 325 (*Comoros*).

¹⁷ See RCE 1999, 308 (*Argentina*); RCE 2000, 210 (*Argentina*); RCE 2002, 320 (*Argentina*).

¹⁸ See RCE 2000, 212 (*Colombia*); RCE 2001, 351 (*Colombia*); RCE 2002, 323 (*Colombia*).

¹⁹ See RCE 1995, 226 (*Costa Rica*); RCE 2001, 354 (*Costa Rica*); RCE 2002, 326 (*Costa Rica*).

²⁰ See RCE 1999, 313 (*Dominican Republic*) and RCE 2001, 357 (*Dominican Republic*).

²¹ See RCE 1992, 256 (*Bolivia*) and RCE 2001, 350 (*Bolivia*).

²² See RCE 1997, 221 (*Brazil*); RCE 1999, 310 (*Brazil*); RCE 2002, 321 (*Brazil*). See also the report of the tripartite committee set up to examine the representation made in 1993 by the Latin American Central of Workers (CLAT) under article 24 of the Constitution alleging non-observance by Brazil of Conventions Nos. 29 and 105, GB.264/16/7.

low of 47 per cent in the *Russian Federation* to a high of 70 per cent in *Kyrgyzstan*. Nearly one out of five survey respondents reported paying workers part of their wages in kind. Among these establishments, payments in kind were equivalent on average to 16 per cent of total establishment output.²³ The Committee, in the same way as other ILO supervisory bodies, has consistently taken the view that any effort to tackle the problem of outstanding wage payments, and thus complying with the requirements of Article 12 of the Convention, should not infringe other provisions of the Convention, such as Article 3 on wage payment in legal tender or Article 4 on allowances in kind.

362. In the context of the representation filed in 1997 by Education International and the Education and Science Employees' Union of Russia against the *Russian Federation* for non-observance of Convention No. 95, the complainant organizations alleged that in some rural areas local authorities had made arrangements with shops to supply teachers and other staff with food up to a certain value on the understanding that cash payment for such commodities would be made once their salaries came through. The Governing Body recalled, in this respect, the provisions of Article 4 of the Convention, which lays down criteria for the limitation and regulation of the payment of wages in the form of allowances in kind, and urged the Government to ensure that measures taken with a view to reimbursing wage arrears do not result in the violation of other provisions of the Convention.²⁴ Following subsequent communications received from the Russian Cultural Workers' Union and the Education and Science Employees' Union of Russia denouncing an increase in the payment of wages in kind in some regions, the Committee has been expressing its concern over the fact that payments in kind in contravention of the conditions set out in the Convention have continued as a method of solving the problem of accumulated wage arrears.²⁵

363. Similarly, in the representation made in 2000 by the General Federation of Trade Unions of the Republic of Moldova alleging non-observance by the *Republic of Moldova* of Convention No. 95, the complainant organization asserted that some 100,000 workers in most branches of the national economy had experienced delays in the payment of their wages ranging from six months to more than a year, and also denounced the widespread practice among the majority of employers of substituting alcoholic drinks and tobacco products for cash wages. In drawing up its recommendations, the

²³ See Christine Evans-Klock and Alexander Samorodov, *The employment impact of privatisation and enterprise restructuring in selected economies*, ILO, 1998, pp. 79-80. See also Daniel Vaughan-Whitehead (ed.), *Paying the price: The wage crisis in Central and Eastern Europe*, ILO, 1998, pp. 26-29.

²⁴ See GB.270/15/5, paras. 40, 43.

²⁵ See *OECD Economic Surveys: Russian Federation*, 1997, p. 115.

Governing Body committee considered the extent to which the reported decline in wage arrears might be attributed to payments in the form of alcohol and tobacco and pointed out once again the need to ensure that measures taken to reimburse wage arrears do not result in the violation of other provisions of the Convention.²⁶ According to the representation made by the Trade Union Confederation of Congo Workers in 1997 alleging non-observance by Congo of Convention No. 95, the Government proposed to Congolese public servants and workers in certain public enterprises, who had been paid from 15 to 18 months in arrears since 1992, that it would ensure the regular payment of wages and arrears by converting them into an internal debt. In its conclusions and recommendations, the Governing Body recalled that the payment of wages in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, is prohibited by the Convention and requested the Government to provide information on the implementation of the undertaking it gave in April 1994 to ensure the regular payment of wages and to pay arrears, and on the methods of reimbursement of wage arrears.²⁷

364. Most recently, the Government of the *Russian Federation* reported the case of a coalmining company which issued promissory notes for the sum of 750,000 roubles in an effort to reduce the amount of wage arrears. The Committee urged the Government to put an end to similar practices, which openly contravene the requirements of Article 3, paragraph 1, of the Convention.²⁸ It appears that in most of the former Soviet republics, and principally in the *Russian Federation*, payment in goods in place of monetary settlements – better known as barter – has become a well-entrenched phenomenon since 1992 pervading all aspects of economic life, resulting in a situation in which companies cannot pay their suppliers, suppliers cannot pay their workers, workers cannot pay their utility bills, and practically no one can afford to pay taxes. According to World Bank figures, it is estimated that by 1997 the overdue debts of Russian enterprises, including unpaid wages, were more than twice the amount of legal tender in circulation. Analysts argued that by the second half of the 1990s, barter had been transformed from an exceptional phenomenon into a stable social institution, while others referred to the “barterization” or “demonetization” of certain transition economies.²⁹ In a

²⁶ See GB.278/5/1, para. 34.

²⁷ See GB.268/14/6, para. 21.

²⁸ See RCE 2002, 338 (*Russian Federation*).

²⁹ See V. Makarov and G. Kleiner, “Barter in Russia: An institutional stage”, in *Problems of Economic Transition*, Vol. 42, No. 11, Mar. 2000, pp. 51-79; A. Iakovlev, “The causes of barter, non-payments, and tax evasion in the Russian economy”, *ibid.*, pp. 80-96. According to the findings of a recent survey of more than 3,000 firms in 20 transition countries, barter and other non-monetary transactions remain widespread in the Russian Federation and Ukraine, as well as in

situation of deepening cash shortages and generalized non-payment, payment by barter was obviously still considered better than continued unpaid arrears. There have been countless press reports on barter arrangements as alternatives to monetary payments, such as those of the factory in the Russian city of Perm that regularly paid its employees in bicycles which they then had to try and sell on the streets in direct competition with their employers. In practice, in some transition economies, the use of promissory notes and barter as a medium of wage payment is part of the much broader recourse to monetary surrogates for the settlement of inter-enterprise debts.³⁰ It is in this sense that wage arrears and payments in kind are often considered as the social costs of a cashless economy, or the price to pay in order to keep the production wheels rolling and employees at work.

365. Admittedly, this is not the place to discuss in detail the ongoing crisis of wage arrears and income insecurity in certain parts of the world. The Committee takes this opportunity, however, to recall the main points on which it has been focusing its attention in recent years with regard to the obligations arising out of Article 12, paragraph 1, of the Convention.

366. In the Committee's view, the deferred payment of wages is part of a vicious circle that inexorably affects the national economy in its entirety. Depriving workers of their cash income lowers consumption, which implies reduced tax revenues for the State, and poor tax collection leads to the stagnation of public spending and growing indebtedness. In turn, such phenomena often lead to higher unemployment and deepening social crisis. The Committee is also concerned about the practices of freezing wage debts and focusing on the payment of current wages instead. Some enterprises attempt in this way to retain their employees at work, while avoiding making any clear commitment with respect to the settlement of outstanding payments. All the evidence indicates that the phenomenon of wage arrears is self-propagating and that a new cycle of non-payment will sooner or later begin. The Committee therefore insists that while the settlement of accumulated wage debts may in truly exceptional cases be spaced out over a reasonable period of time, nothing short of the total repayment

Belarus, Republic of Moldova and Kazakhstan, while they are far from negligible in other Central and Eastern European countries, particularly in Croatia and Slovenia; see Wendy Carlin, Steven Fries, Mark Schaffer and Paul Seabright, "Barter and non-monetary transactions in transition economies: Evidence from a cross-country survey", EBRD, Working paper No. 50, June 2000. See also Simon Commander and Christian Mumssen, "Understanding barter in Russia", EBRD, Working paper No. 37, Dec. 1998.

³⁰ It is estimated that in the late 1990s in the *Russian Federation* alone there was a \$15 billion market in IOUs, known as *veksels* (from the German word "wechsel" or exchange). Many *veksels* are redeemable for cash, while others are good for oil, electricity, chemicals, or cement. On *veksels* and other money surrogates, see *OECD Economic Surveys: Russian Federation, 1997*, pp. 178-185.

of the wages due can offer any real prospects of escaping from this vicious circle.

6.2. The importance of supervision, sanctions and fair compensation

71. The Committee notes with concern the increase in the number of cases of delayed payment of wages, non-payment or partial payment of wages in a growing number of countries in Eastern Europe, Africa and Latin America. [...] These practices openly contravene social justice and more precisely the principle of wage protection established under Convention No. 95, particularly the principle of regular payment of wages for work done or services rendered. [...]

72. Even if these situations have their origin in economic and financial difficulties caused by the transition to a market economy or by the implementation of structural adjustment programmes, their scope and persistence may have been aggravated by the failure of the States concerned to take measures to ensure the respect of laws, which in most countries stipulate adequate protection of workers against the delayed payment, non-payment or partial payment of their wages. Such delays or non-payment entail serious social consequences since they deprive the workers and their families of the resources that they have right to, and also disastrous consequences for the economy and public finances. [...]

73. The Committee considers, in light of the cases which the supervisory bodies of the ILO have so far examined, that the application of the Convention, through the national provisions giving effect to it, should involve three principal steps:

- (i) effective assessment of the situation in order to determine the amount and nature of debts due as wages, the number of workers concerned, the number and nature of enterprises concerned in the delay in payment of wages so that causes of the delay can be analysed and remedies instituted;
- (ii) appropriate sanctions to punish and prevent infringements. It is not enough to provide for such sanctions in law; they should be strictly enforced against those who take advantage of the economic situation to commit abuses; and
- (iii) steps to make good the detriment suffered, including not only the amounts due as wages but also the sums to compensate for the loss caused by the delay in payment. It is useful in this regard to examine the possibilities of submitting the cases to the court in order to make good the detriment suffered.

Source: Report of the Committee of Experts, 1997, General Report, paras. 71-73 at p. 21.

367. While acknowledging that the solution to the wage debt crisis is also conditional on the existence of an effective labour administration, a credible judicial system, healthy financial institutions and solid industrial relations, the Committee wishes to emphasize that a situation in which part of the workforce is systematically denied the fruits of its labour cannot be prolonged and that priority action is therefore needed to put an end to such practices. The Committee also firmly believes that, while the problem of delays in the payment

of wages may be symptomatic of transition economies, this cannot stand as a valid excuse over the years for the continued failure to honour contractual obligations and pay workers regularly what is due to them.³¹ Nor would it be an excuse that the deferred payment of wages only occurs, or is largely confined, in the private sector. In this respect, the Committee has emphasized on a number of occasions that a government is bound to exert all its authority to ensure not only that wages are paid at regular intervals in the public sector, but also that the requirements of the Convention are fully and scrupulously applied in private enterprises and other non-state-owned undertakings.

368. On a more practical level, the Committee considers that the application of the Convention comprises three essential elements in this respect: (i) efficient control; (ii) appropriate sanctions; and (iii) the means to redress the injury caused, including not only the full payment of the amounts due, but also fair compensation for the losses incurred by the delayed payment.³²

369. With respect to control and supervision, the Committee hardly needs to emphasize the importance of properly functioning labour inspection services capable of identifying breaches of wage legislation and prosecuting offenders. In the Committee's view, the effectiveness of such services should be measured not so much by the number of inspection visits or the proliferation of the relevant bodies and agencies, but by the concrete results achieved preventing the occurrence of wage arrears. It is true, of course, that in order to exercise effective control of the situation with regard to the payment of wages, labour inspection services must be provided with the numerical strength and the material resources required by the scope and difficulty of their task.³³ The information available shows that in the countries hardest hit by wage arrears in recent years, i.e. the *Russian Federation* and *Ukraine*, despite the restructuring and reinforcement of state labour inspection bodies, mass violations of labour

³¹ See, for instance, RCE 2002, 345 (*Ukraine*). Similar remarks have been made by the Conference Committee when examining individual cases concerning compliance with the Convention; see ILC, 85th Session, 1997, *Record of Proceedings*, p. 19/104 and ILC, 86th Session, 1998, *Record of Proceedings*, p. 18/105.

³² See, for instance, RCE 2000, 215 (*Russian Federation*); RCE 1997, 227 (*Ukraine*); RCE 1995, 233 (*Turkey*). See also the report of the Committee set up to examine the representation under article 24 of the Constitution alleging non-observance by the *Russian Federation* of Convention No. 95, November 1997, GB.270/15/5, paras. 30-40, pp. 7-10, and the Report of the Committee set up to examine the representation under article 24 of the Constitution alleging non-observance by Congo of Convention No. 95, March 1996, GB.265/12/6, paras. 21-24, pp. 6-7.

³³ For example, at the 1999 Conference Committee discussion of the case of the *Russian Federation*, the Employer members estimated that roughly 1 per cent of the wage payment situation was being addressed by the Russian labour inspection system, and that a much lower percentage of the problem was being corrected; see ILC, 87th Session, 1999, *Record of Proceedings*, p. 23/125.

rights continue, including the irregular payment of wages. In many cases, the failure to pay wages on time is not due to liquidity problems, but simply to the misappropriation of wage funds. It has also been observed that the most prosperous and best-paid branches of production, such as gas and electricity generation, are among those with the highest incidence of wage arrears as they endeavour to minimize monetary resources and engage in barter transactions for tax evasion purposes. Supervision is therefore of critical importance.

370. There can be no doubt that the problem of the delayed payment or non-payment of wages often reveals grave weaknesses in the national legislation and therefore calls for appropriate action at the legislative level. Yet, the Committee wishes to emphasize that legislative conformity in itself does not guarantee compliance with the Convention. Without effective enforcement in practice, national laws and regulations are destined to remain a dead letter and offer little consolation to workers deprived of their livelihood.

371. As regards the imposition of sanctions, the Committee places particular emphasis on the need for truly dissuasive penalties, such as harsh monetary fines, so that employers no longer find it preferable to pay what may be no more than a symbolic fine rather than releasing wage funds on time.³⁴ Once again, the adequacy of the sanctions prescribed for violations of the legislation on wage protection needs to be judged only by tangible results, that is to say a sizeable reduction in the number of workers suffering from arrears in the payment of their wages.³⁵

372. With reference to the third element mentioned above, the Committee barely needs to recall that workers who are unpaid for many months or even years, are entitled not only to the payment of their full wages due, but also to appropriate compensation for the injury suffered. Steps to make good such injury need to be taken especially in conditions of high inflation where any delay in the payment of wages results in a real contraction of the worker's income.

373. Another important aspect is the need for reliable information concerning the nature and extent of wage arrears. As the Committee has been pointing out for a number of years, a proper assessment of the problem in its true dimensions, with its causes and effects, is only possible through the systematic collection of up-to-date statistical information emanating from credible sources.

³⁴ See RCE 2002, 341 (*Turkey*).

³⁵ This view was also shared by the Committee set up to examine the representation made in 1984 by the General Confederation of Portuguese Workers (CGTP-IN) under article 24 of the Constitution alleging non-observance by *Portugal* of Convention No. 95, which concluded that the "penalties referred to above do not appear to have halted the increase in the number and duration of cases of delay in the payment of wages over the period under consideration [and] consequently they cannot be considered adequate within the meaning of Article 15(c) of the Convention"; see *Official Bulletin*, Special Supplement 4/1985, Vol. LXVIII, Series B, para. 45, p. 14.

In practically every comment it has addressed on this issue, the Committee has requested full data on the number of workers affected, the amount of arrears settled and the outstanding amount of arrears, the number of inspections made, the penalties imposed and the time schedule for the repayment of the sums remaining due.³⁶

6.3. The failure to ensure the regular payment of wages

30. The Committee recalls that a State that ratifies the Convention is required not only to apply it scrupulously to workers whose wages are financed from the State's budget, but also to ensure that it be applied by local authorities and private enterprises. [...]

31. Whether it is called wage arrears, delayed payment of wages or non-payment of wages, the situation falls within the scope of the Convention as a failure to ensure the regular payment of wages provided under Article 12, paragraph 1. [...]

33. The present allegation therefore concerns the effective enforcement of the relevant national legislation, since the legislative conformity alone is insufficient to constitute satisfactory compliance with the Convention unless the law is effectively enforced in practice. [...]

35. The Committee notes that the Government considers that the problem of wage arrears can only be solved by the resolution of the financial crisis. While it is difficult to deny the relation between the problem of wage arrears and the general situation of finance and the national economy, it is also obvious that the wage arrears of such a magnitude all over the country and throughout the sectors are adversely affecting the national economy. It seems indispensable to the Committee that the Government make a firm commitment and take all possible measures to put an end to the problem of wage arrears so as to cut the chain of vicious circle – financial crisis causing wage arrears, resulting in prejudice to the national economy, leading to the reduction of tax revenue, which aggravates the financial crisis.

36. What the Committee notes with special concern is the reference by the Government among the principal causes of the wage arrears, to the diversion of funds earmarked for the pay bill to other directions such as financial transactions, involving a massive disrespect of the civil law principles and even criminal abuse. If such practices were to be left untouched, all other financial measures to mobilize resources for the prompt payment of wages would have only limited results and just further benefit those who take advantage of the situation.

37. In the opinion of the Committee, the effective application of the Convention comprises three principal aspects; supervision, appropriate penalties to prevent and punish infringements, and steps to make good the prejudice suffered. [...]

Source: Report of the Committee set up to examine the representation concerning non-observance by the Russian Federation of Convention No. 95 made under article 24 of the Constitution by the Education International and the Education and Science Employees' Union of Russia, Nov. 1997, GB.270/15/5.

³⁶ See, for instance, RCE 2002, 322 (*Central African Republic*), 329 (*Djibouti*), 347 (*Zambia*). Similarly, the Conference Committee has emphasized that without such data it would be very difficult to evaluate any substantial progress made in the settlement of wage arrears and reach any conclusions with regard to compliance with the Convention; see, for instance, ILC, 87th Session, 1999, *Record of Proceedings*, p. 23/126.

374. In the Committee's opinion, bringing the accumulation of wage arrears to an end requires sustained efforts, an open and continuous dialogue with the social partners and a wide range of measures, not only at the legislative level but also in practice.³⁷ The Committee remains convinced that in view of the complexity of the issues related to the deferred payment of wages, viable solutions may only be found in cooperation with the social partners. This point is of particular relevance to countries in transition, since social dialogue is the only way of sharing the burden of economic reforms while preserving social peace. Negotiated solutions have much a better chance of succeeding in a context where social consensus is the only solid basis for the continuation of painful structural changes. Finally, the Committee is bound to reiterate the need for strong commitment and rigorous action on the part of state authorities in addressing the three crucial parameters of the problem, namely tight supervision, severe sanctions and appropriate compensation to workers for the loss incurred.

1.2. Pay intervals in national law and practice

375. In most countries the labour legislation requires wages to be paid regularly and at short intervals. Labour laws often provide for a maximum pay period generally applicable to all employed persons, while in some instances pay intervals vary according to the type of work or the type of employment contract.

376. In many countries, the national legislation prescribes a maximum pay interval which is applicable to employed persons in general or to broad categories of workers. Most of these countries provide for the payment of wages not less often than once a month. This is the case, for instance, in *Brazil*,³⁸

³⁷ See, for instance, RCE 2001, 354 (*Congo*) and RCE 1999, 319 (*Ukraine*). See also ILC, 86th Session, 1998, *Record of Proceedings*, p. 18/101 and ILC, 75th Session, 1988, *Record of Proceedings*, p. 28/48.

³⁸ (2), s. 459; (7), s. IV; (8), s. 331. This is also the case in *Bahamas* (1), s. 3; *Cameroon* (1), s. 68(1); *Cape Verde* (1), s. 118; *Chad* (1), s. 259; *Chile* (1), s. 55; *Democratic Republic of the Congo* (1), s. 80; *Dominica* (2), Schedule, s. 3(b); *Estonia* (2), s. 31(1); *Guinea-Bissau* (1), s. 104(2); *Hungary* (1), s. 155(1); *Republic of Korea* (1), s. 42(2); *Kyrgyzstan* (1), s. 233(1); *Libyan Arab Jamahiriya* (1), s. 32(1); *Malta* (1), s. 28(1); *Mauritius* (1), ss. 4(1), 8(1); *Paraguay* (1), s. 232(a); *Poland* (1), s. 85(1); *Romania* (1), s. 87(1); (2), s. 7(1); *Slovenia* (1), s. 134(1); *Swaziland* (1), s. 47(1); *Switzerland* (2), s. 323; *Turkey* (1), s. 26; *Uganda* (1), s. 35; *United Kingdom: Jersey* (17), s. 10; *Montserrat* (21), s. 16(2); *Virgin Islands* (22), s. C34(1); the *United Republic of Tanzania* (1), s. 58(1); *Uruguay* (2), s. 31; *Yemen* (1), s. 61. Similarly, in the United States, in some states of the Union, such as *Colorado* (10), s. 8-4-105(1), *Delaware* (13), s. 1102(a), *Idaho* (17), s. 45-608, *Kansas* (21), s. 44-314, *Minnesota* (29), s. 181.101, *South Dakota* (49), s. 60-11-9, and *Wisconsin* (58), s. 109.03(1), provision is made for pay periods of no greater duration than one calendar month or 30 days. The Government has reported that pay periods longer than a month are uncommon and subject to legal challenge. In *Germany* (1),

China,³⁹ Cuba,⁴⁰ Czech Republic,⁴¹ Dominican Republic,⁴² Iraq,⁴³ Japan,⁴⁴ Malaysia,⁴⁵ Nigeria,⁴⁶ Spain⁴⁷ and Sri Lanka.⁴⁸ In general, the labour laws of these countries allow for shorter intervals, e.g. daily, weekly or fortnightly, to be specified in collective agreements, enterprise agreements or individual contracts of employment. In some cases, the law further provides that where no period is specified in the contract, the wage period is deemed to be one month.⁴⁹ In Seychelles,⁵⁰ cash wages are payable at regular intervals as agreed between the employer and the worker, but not less than once a month and not later than the fifth day following the date on which they fall due. In Australia, under the laws of Queensland,⁵¹ wages must be paid at least monthly unless an industrial instrument governing the relevant employment provides for another pay interval. In India,⁵² the wage periods are fixed by the employer provided that no such wage period may exceed one month. In Indonesia,⁵³ the payment of wages may be carried out once a week at the earliest, or once a month at the latest.

s. 119a; (4), s. 64, according to the Government's report, the monthly payment has most probably now become the general rule.

³⁹ (1), s. 7; (2), s. 50.

⁴⁰ (1), s. 123.

⁴¹ (1), s. 119(1).

⁴² (1), ss. 198, 199, 208, 209.

⁴³ (1), s. 42(1).

⁴⁴ (2), s. 24(2); (5), s. 53.

⁴⁵ (1), s. 18.

⁴⁶ (1), ss. 9(4) and 15. No contract may provide for the payment of wages at intervals exceeding one month unless the written consent of the state authority has been previously obtained.

⁴⁷ (1), s. 29(1).

⁴⁸ (1), ss. 19(1)(b), 31(3); (2), ss. 2(b), 23(1).

⁴⁹ For instance, in Singapore (1), s. 20, an employer may fix salary periods not exceeding one month, while in the absence of a salary period so fixed the salary period shall be deemed to be one month.

⁵⁰ (1), s. 32(2). Similarly, in Croatia (1), s. 83(2), (3), the Labour Act provides that the pay periods are to be fixed by collective agreements or by individual contracts at intervals not exceeding one month.

⁵¹ (7), s. 393(1).

⁵² (1), s. 4(2). Similarly, in Thailand (1), s. 70(1), where wages are calculated on a monthly, daily or hourly basis, on the basis of another period of not more than one month, or on a piece-rate basis, payment to the employee must be made not less than once a month.

⁵³ (2), s. 17. Similarly, in Namibia (1), s. 36(1), the law stipulates that wages must be paid weekly or, if the employee and his employer so agree, fortnightly or monthly.

377. In other countries, such as *Bulgaria*,⁵⁴ *Lithuania*,⁵⁵ *Mexico*,⁵⁶ *Panama*,⁵⁷ *Philippines*,⁵⁸ *Russian Federation*⁵⁹ and *Venezuela*,⁶⁰ the standard period for the payment of labour remuneration is twice a month, even though the periodicity of wage payment may in principle be negotiated in the framework of collective or individual agreements. In Canada,⁶¹ the frequency of payment of wages is established differently across the country, but is semi-monthly or not more than 16 days in the majority of the jurisdictions. In *Ukraine*,⁶² wages are paid regularly according to the deadlines established in a collective agreement, but not less frequently than twice a month at intervals not exceeding 16 calendar days. In *Saint Vincent and the Grenadines*,⁶³ the wages of labourers, i.e. persons employed by the day or employed to do daily task work at a fixed wage or rate,

⁵⁴ (1), ss. 245(1), 270(2). This is also the case in *Belarus* (1), s. 73; *Republic of Moldova* (1), s. 102; (2), s. 19(1); *Tajikistan* (1), s. 108. Similarly, in the United States, in a large number of states, including Arizona (7), s. 23-351(A), Arkansas (8), s. 11-4-401(a), California (9), s. 204, District of Columbia (14), s. 32-1302, Hawaii (16), s. 388-2(a), Illinois (18), s. 115/3, Indiana (19), s. 22-2-5-1, Kentucky (22), s. 337.020, Maine (25), s. 621-A(1), Maryland (26), s. 3-502, Mississippi (31), s. 71-1-35(1), Missouri (32), s. 290.080, Nevada (35), s. 608.060, New Jersey (37), s. 34:11-4.2, New Mexico (38), s. 50-4-2(A), Ohio (43), s. 4113.15, Oklahoma (44), s. 40-165.2, Utah (52), s. 34-28-3(1)(a), and Wyoming (59), s. 27-4-101, the payment of wages is generally semi-monthly or at intervals not exceeding 16 days. In contrast, in other states, such as Connecticut (11), s. 31-71b, New Hampshire (36), s. 275:43, and Rhode Island (47), s. 28-14.2.2, wages are to be paid, in principle, as often as once a week, but different pay arrangements may be provided for in collective bargaining agreements. A table of state pay day requirements is found at www.dol.gov/esa/programs/whd/state/payday.htm.

⁵⁵ (2), s. 11.

⁵⁶ (2), s. 88.

⁵⁷ (1), s. 148.

⁵⁸ (1), s. 103; (2), Bk. III, Rule VIII, s. 3(a). If on account of *force majeure* or circumstances beyond the employer's control, payment of wages cannot be made, the employer shall pay the wages immediately after such *force majeure* or circumstances have ceased. But no employer shall make payment less frequently than once a month.

⁵⁹ (1), s. 136.

⁶⁰ (1), s. 150. However, wages may be paid at intervals not exceeding one month in respect of workers receiving food and lodging from their employer. The situation is similar in *Nicaragua* (2), ss. 86, 146, where the pay interval may not exceed a fortnight in the case of salaried employees, except for domestic workers who may receive their wages monthly.

⁶¹ See, for instance, *British Columbia* (6), s. 17(1); *Manitoba* (7), s. 86(1); *New Brunswick* (8), s. 35(1); *Newfoundland and Labrador* (9), s. 33(1); *Nova Scotia* (12), s. 79(1)(a); *Prince Edward Island* (15), s. 30(2)(a); *Quebec* (16), s. 43; *Saskatchewan* (17), s. 48(1). In contrast, in *Alberta* (4), s. 7(2), a pay period may not be longer than one work month, whereas in *Ontario* (14), s. 11(1), the law stipulates that an employer must establish a recurring pay period without specifying its length.

⁶² (2), s. 24.

⁶³ (1), s. 3.

are paid at intervals not exceeding 14 days. In Australia, in New South Wales,⁶⁴ remuneration payable to an employee must be paid, if so demanded, at least once every fortnight, while industrial instruments may provide for other pay intervals, such as weekly payments. In Tasmania,⁶⁵ awards and registered agreements generally require wages to be paid on either a weekly or fortnightly basis.

378. In a certain number of countries, different wage payment intervals are prescribed for different categories of employed persons. For the most part, national laws differentiate between wage earners, or manual workers or workers employed by the hour, day or week, and salaried employees, or workers whose wages are calculated on a monthly or annual basis. Thus, wages must be paid weekly or fortnightly to wage earners and fortnightly or monthly to salaried employees. This is the case, for example, in *Azerbaijan*,⁶⁶ *Colombia*,⁶⁷ *Ecuador*,⁶⁸ *Egypt*,⁶⁹ *Israel*⁷⁰ and *Tunisia*.⁷¹ In *Costa Rica*⁷² and *Guatemala*,⁷³ the parties may fix the intervals for the payment of wages, which may not

⁶⁴ (5), s. 117(1).

⁶⁵ In the terms of most awards, wages must be paid weekly not later than the Thursday of the week of payment; see, for instance, Fuel Merchants Award, s. 32; Baking Industry Award, s. 24; Optical Industries Award, s. 26(a); Meat Retailing Award, s. 23. In other cases, provision is made for payment not less often than fortnightly as, for instance, in the Hospitals Award, s. 39(a) and the Broadcasting and Television Award, s. 28(a). Yet other awards, such as the Estate Agents Award, s. 24, provide for wage payment at least once a month.

⁶⁶ (1), ss. 172(1), (2), 174(1) and 178(1). This is also the case in *Benin* (1), s. 221; *Burkina Faso* (1), s. 113; *Central African Republic* (1), s. 105; *Comoros* (1), s. 104; *Côte d'Ivoire* (1), s. 32(3); *Djibouti* (1), s. 100; *Gabon* (1), s. 152; *Islamic Republic of Iran* (1), s. 37; *Lebanon* (1), s. 47; *Morocco* (1), s. 3; *Oman* (1), s. 55; *Syrian Arab Republic* (1), s. 47; *Togo* (1), s. 96; *United Kingdom: Gibraltar* (11), s. 19(1)(a), (c). Similarly, in the United States, in the State of New York (39), s. 191(1)(a), (d), manual workers must be paid weekly while clerical workers may not be paid less frequently than semi-monthly. In *Kenya* (1), s. 5(2), in the case of casual employees, payment is due at the end of the day, whereas employees employed for a period exceeding one month must be paid at the end of each month.

⁶⁷ (1), s. 134(1).

⁶⁸ (2), s. 83.

⁶⁹ (1), s. 34.

⁷⁰ (1), ss. 9, 10 and 13. The Minister of Labour may prescribe wage payment intervals other than those specified in the Wage Protection Act, but no use has been made so far of this permissive provision.

⁷¹ (1), s. 140.

⁷² (1), s. 168. Similarly, in *Honduras* (2), s. 368, the pay interval may not in any circumstances exceed one week in the case of manual workers or one month in the case of intellectual workers and domestic servants. In *Bolivia* (1), ss. 34, 53; (2), s. 40, the legislation provides for weekly payments in respect of home workers, monthly payments in the case of contracted workers and domestic workers and fortnightly payments for manual workers.

⁷³ (2), s. 92.

exceed in any case a fortnight in the case of manual workers and a month in the case of intellectual workers and domestic servants. Similar provisions exist in *Congo*⁷⁴ and *Niger*,⁷⁵ provided that a daily worker engaged by the hour or by the day for an occupation of short duration is to be paid every day at the end of work. In Viet Nam,⁷⁶ an employer is entitled to determine the periodicity of wage payment, whether calculated by reference to hours, days, weeks or months, or on an output basis, provided that the selected pay interval is applied for a fixed period of time and the employee is notified of that interval. Employees whose wages are calculated by reference to hours, days or weeks shall be paid at the end of the hour, day or week or be paid accumulated wages as agreed upon by the parties, but at least every 15 days, whereas employees whose remuneration is calculated by reference to months shall be paid monthly or half-monthly. Similarly, in *Argentina*,⁷⁷ workers whose remuneration is calculated by the month are to be paid at the end of each calendar month, whereas workers remunerated at a daily or hourly rate must be paid weekly or fortnightly. In Kuwait⁷⁸ and Qatar,⁷⁹ workers engaged at yearly or monthly rates must be paid at least once a month, whereas workers paid on an hourly, daily, weekly or piece rate must be paid at least once in every two weeks.

⁷⁴ (1), ss. 88, 89. This is also the case in *Mali* (1), s. L.103; *Mauritania* (1), s. 90; *Senegal* (1), s. L.115. In these countries, the law further provides that such other pay intervals as may be customary may apply to some trades and professions to be specified by the Labour Minister upon the recommendation of the labour advisory board.

⁷⁵ (1), s. 160. However, section 206 of Decree No. 67-126/MFP/T of 7 September 1967 exempts all agricultural, industrial and commercial enterprises from the obligation of paying the wages of workers employed on a daily or weekly basis at regular intervals not exceeding 15 days. The Committee has been commenting for more than 30 years on the inconsistency of such a provision with the requirements of the Convention; see RCE 2002, 335 (*Niger*).

⁷⁶ (1), s. 58(2), (3).

⁷⁷ (1), s. 126(a), (b).

⁷⁸ (1), s. 29. This is also the case in *Bahrain* (1), s. 68 and the *United Arab Emirates* (1), s. 56. Similarly, in *Saudi Arabia* (1), s. 116, the wages of employees that are calculated on a daily rate are to be paid at least once a week, while wages calculated on a monthly rate have to be paid once a month. In *Finland* (1), Ch. 2, s. 13, if the basis for a time rate is a period shorter than one week, payment is due at least twice a month, otherwise once a month.

⁷⁹ (1), s. 29(2).

379. Also, in *France*⁸⁰ and *Guinea*,⁸¹ salaried employees, as well as wage earners to whom an agreement for monthly payment applies, are paid at least once a month, while wage earners not benefiting from such an agreement are paid at least twice a month at intervals not exceeding 16 days. In *Norway*,⁸² when hourly, daily or weekly pay is agreed upon, payment has to be effected at least once a week, while payments to employees whose remuneration is calculated on a monthly or annual basis have to be made twice a month unless otherwise agreed. In *Belgium*⁸³ and *Luxembourg*,⁸⁴ wage payment is made, in principle, at least twice a month at intervals not exceeding 16 days and in no case less often than once a month. Exceptions may be authorized by decision of the appropriate joint committee, after they have been made binding by the Head of the State.

380. In other countries,⁸⁵ the law makes a further distinction in respect of intervals for the payment of wages to persons whose remuneration is calculated on a piece-work basis or depends on the completion of a specific task. Thus, in the case of piece work expected to take more than a fortnight to complete, the dates of payment may be fixed by mutual agreement, but the worker has to receive each fortnight an advance equal to at least 90 per cent of the minimum

⁸⁰ (1), s. L.143-2. The possibility of concluding collective agreements by virtue of which wage workers are to be paid on a monthly basis and all or part of the advantages previously accorded to salaried employees are extended to them was introduced by Act No. 78-49 of 19 January 1978. Only homeworkers, seasonal, casual and part-time workers are exempted from the scope of such agreements. According to an observation submitted recently by a French workers' organization, the wording of the relevant provision of the French Labour Code is ambiguous, since it makes no explicit reference to payment "at regular intervals" and does not specify whether the term "month" means a calendar month or a 30-day period between two dates. If construed as a calendar month, the wage could be paid on the first day of one month and the last day of the next month, which would mean a 60-day interval. In its reply, the Government recognized that section L.143-2 of the Code may be understood differently, but stated that this could not call into question the principle of the regular payment of wages, especially in the light of section R.154-3 of the Code, which prescribes specific penalties for any violation of the provisions in respect of the payment of wages.

⁸¹ (1), ss. 215, 216.

⁸² (1), s. 55(2).

⁸³ (1), s. 9.

⁸⁴ (1), s. 4.

⁸⁵ For instance, *Burkina Faso* (1), s. 113; *Central African Republic* (1), s. 105; *Comoros* (1), s. 104; *Congo* (1), s. 88; *Côte d'Ivoire* (1), s. 32(3); *Djibouti* (1), s. 100; *Gabon* (1), s. 152; *Mali* (1), s. L.103; *Mauritania* (1), s. 90; *Niger* (1), s. 160; *Senegal* (1), s. L.115; *Togo* (1), s. 96. Similarly, in *France* (1), s. L.143-2; *Guinea* (1), s. 215; *Lebanon* (1), s. 47; and *Morocco* (1), s. 3, in the case of piece work for a period longer than a fortnight, the date of payment may be fixed by mutual agreement, but the employee must receive fortnightly payments on account and be paid the residue in full during the fortnight following the delivery of the goods. See also *Malta* (1), s. 28(1)(b), and *United Kingdom: Gibraltar* (11), s. 19(1)(b).

wage, and be paid the full amount within the fortnight following delivery of the completed work. Similarly, in Saudi Arabia⁸⁶ and Tunisia,⁸⁷ in the case of piece work lasting longer than two weeks, the worker must receive an advance each week proportionate to the work completed and the full balance within the week immediately following the delivery of the work. In the Philippines,⁸⁸ employees engaged to perform a task which cannot be completed in two weeks have to be paid at intervals not exceeding 16 days in proportion to the amount of work completed, with the final settlement to be made upon completion of the work, while in Hungary,⁸⁹ workers employed to perform a task the completion of which requires more than a month must receive an advance at least once a month. In Argentina,⁹⁰ Ecuador,⁹¹ Nicaragua⁹² and Paraguay,⁹³ workers remunerated at piece or task rates shall be paid once every week or fortnight in proportion to the work completed. In Israel,⁹⁴ a wage payable for contract work which is expected to take more than 14 days has to be paid on the day of completion of the work, unless provision is made for advances under the terms of a collective agreement or a contract of employment. In Suriname,⁹⁵ wages not fixed at time rates are deemed to be payable at the intervals customary for the work that is most comparable, as regards its nature and the time and place, to the work for which the wage is payable. Moreover, in the case of wages calculated on the results of the work performed, a certain proportion of the wages, equal to at least three-fourths of the customary wage for comparable work, must be paid on each pay day, as may have been agreed, subject to a final settlement to be made on the first pay day that it is possible to do so.

381. Specific wage payment intervals for persons paid on a commission or percentage basis, such as commercial agents or travelling salesmen, are

⁸⁶ (1), s. 116. This is also the case in *Egypt* (1), s. 34(b); *Libyan Arab Jamahiriya* (1), s. 32(2); *Rwanda* (1), s. 96; *Syrian Arab Republic* (1), s. 47(b).

⁸⁷ (1), s. 140.

⁸⁸ (1), s. 103; (2), Bk. III, Rule VIII, s. 3(b). Similarly, in *Finland* (1), Ch. 2, s. 13, if performance-based work lasts longer than one pay period, part of the pay determined on the basis of the time spent on the work must be paid for each pay period.

⁸⁹ (1), s. 155(2). In *Kenya* (1), s. 5(1)(b), the *United Republic of Tanzania* (2), s. 34(3) and *Uganda* (2), s. 31(2), workers performing piece work are entitled to be paid at the end of each month in proportion to the amount of work completed, or on the completion of such work, whichever date is earlier. See also *Swaziland* (1), s. 47(1)(d) and *Viet Nam* (1), s. 140.

⁹⁰ (1), s. 126(c).

⁹¹ (2), s. 84.

⁹² (2), s. 159.

⁹³ (1), s. 232(b).

⁹⁴ (1), s. 11.

⁹⁵ (1), ss. 1614M, 1614P.

prescribed in the laws of some countries. This is the case, for instance, in *Tunisia*.⁹⁶ In *Costa Rica*⁹⁷ and *Malta*,⁹⁸ employees whose wages consist of a share of profits, or of a commission on sales or payments made or received by the employer, have to be paid fortnightly or monthly in such proportions as may be determined by agreement between such employees and the employer, while a settlement of accounts must be made at least once a year by the employer in respect of such employees. Similarly, in *Mexico*⁹⁹ and *Spain*,¹⁰⁰ the legislation provides for the sharing out of profits on an annual basis.

382. In some countries, wage periods are freely negotiable, although in practice wages are paid weekly, fortnightly or monthly. This is the case, for instance, in *Ghana*,¹⁰¹ *Guyana*¹⁰² and *Slovakia*.¹⁰³ In *Thailand*,¹⁰⁴ wages calculated other than on a monthly, daily or hourly basis are payable at the time agreed upon between the employer and the employee. In *Botswana*¹⁰⁵ and *Zambia*,¹⁰⁶ wage intervals are fixed in accordance with the terms of the contract of service, provided that no wage period is less than one week or exceeds one month. In the *Netherlands*,¹⁰⁷ wages may be paid as frequently as the parties

⁹⁶ (1), s. 140. In *Morocco* (1), s. 3, and *Rwanda* (1), s. 96, the commissions owed to travelling salesmen and commercial agents must be settled at least once every three months.

⁹⁷ (1), s. 168. This is also the case in *Guatemala* (2), s. 92; *Honduras* (2), s. 368; United Kingdom: Gibraltar (11), s. 19(1)(d), (4).

⁹⁸ (1), s. 28(1)(e), (3).

⁹⁹ (2), s. 122.

¹⁰⁰ (1), s. 29(2).

¹⁰¹ (1), ss. 31(1)(e), 33(2), (3). The Government has reported that under the new draft Labour Code now before the Parliament specific provision will be made for the payment of labour remuneration to workers directly and at regular intervals to workers.

¹⁰² (1), s. 18(3).

¹⁰³ (1), s. 130(2).

¹⁰⁴ (1), s. 70(2).

¹⁰⁵ (1), s. 75(1). Similarly, in *Mozambique* (1), s. 53(1)(c), wages are to be paid at regular intervals of a week, fortnight or month, in accordance with the conditions fixed by the individual labour contract or collective agreement, while in *Sudan* (1), s. 35(2), wages may be paid on a daily, weekly or monthly basis as agreed upon by the parties, except in cases specified by order of the competent authority.

¹⁰⁶ (1), s. 48(1).

¹⁰⁷ (1), s. 1638L. In *Suriname* (1), ss. 1614L, 1614N, wages are in principle payable at the end of each week, month or quarter. These intervals may be reduced by mutual consent of the parties, but may not be increased without the written permission of the Governor. In the case of employees whose remuneration is related to certain data to be ascertained from the employer's accounts, payment must be effected whenever the amount of the wage can be determined and in any case at least once a year.

may agree upon, but not less frequently than once a quarter. In *Austria*,¹⁰⁸ questions such as the procedure for the settling of wage accounts, in particular the time and place of payment, are normally regulated by means of a works agreement concluded between the owner of an establishment and the works council, but where agreement cannot be reached a decision may be taken by a disputes board if either of the parties so requests. In *Italy*,¹⁰⁹ the only relevant legal provision lays down that the time and modalities of payment must be those customarily applied in the place where the work is performed. In practice, wage periods are regulated by collective agreements, although provision is most frequently made for monthly payment for workers and employees, but with a standard payment on account in the middle of the month. However, various other intervals are prescribed for different benefits or wage supplements, e.g. annual periods for productivity bonuses, 13th month, etc. In the United States,¹¹⁰ in some states of the Union, the frequency of payment appears to be freely negotiable and may be daily, weekly, bi-weekly, semi-monthly or monthly.

383. The legislation of some countries, such as *Algeria*¹¹¹ and *Madagascar*,¹¹² contains a general requirement for the payment of wages at regular intervals, but provides no concrete indication as to the length of such intervals. In other countries, such as *Barbados* and *Cyprus*, no pay intervals are prescribed by law, but the requirements of the Convention are fully applied in practice. Similarly, the Government of New Zealand has reported that there are no specific legislative provisions concerning the frequency of wage payments, but that provisions for the regular payment of wages are agreed to by the parties to an employment agreement at the time that the agreement is negotiated. Similarly, in *Chad*,¹¹³ the law does not expressly prescribe that wages are due at regular intervals, nor does it fix any such intervals, but merely provides that except in the case of *force majeure* wages calculated on a monthly basis must be paid not later than eight days after the end of the month. In the same way, in *Jordan*,¹¹⁴ the law merely prescribes that remuneration must be paid within a period not exceeding seven days from the date on which it becomes payable.

¹⁰⁸ (1), s. 97(3).

¹⁰⁹ (1), s. 2099.

¹¹⁰ See, for instance, Alaska (5), s. 23.05.140(a); Iowa (20), s. 91A.3(1); Michigan (28), s. 408.472(2); North Carolina (40), s. 95-25.6.

¹¹¹ (1), ss. 6, 88.

¹¹² (1), s. 73.

¹¹³ (1), ss. 259, 260. If the worker so requests, he may receive up to 60 per cent of his wage on account.

¹¹⁴ (1), s. 46(a). The Government has reported, however, that in practice wages are paid on a monthly, fortnightly or weekly basis.

2. Final settlement of wages upon termination of the employment contract

384. Article 12, paragraph 2, of the Convention provides that upon the termination of a contract of employment, a final settlement of all wages due shall be effected in accordance with national laws or regulations, collective agreement or arbitration award or, in the absence of any applicable law, regulation, agreement or award, within a reasonable period of time having regard to the terms of the contract.¹¹⁵

385. In some countries, the legislation provides that all payments due to the worker have to be made in full on the day of the termination of the employment relationship. This is the case, for instance, in *Azerbaijan*,¹¹⁶ *Botswana*,¹¹⁷ *Brazil*,¹¹⁸ *Colombia*,¹¹⁹ *Czech Republic*¹²⁰ and *Uganda*.¹²¹ Similarly, in Australia, at the state level,¹²² most industrial awards and collective agreements require all monies due to the employee to be paid on the day of termination or to be forwarded by registered post within two days of

¹¹⁵ The text initially proposed by the Office referred to “a final settlement of wages to be effected within a period of time to be prescribed by national laws or regulations”. At the time of the first Conference discussion, this text was amended to give a greater degree of latitude by referring to “a reasonable period of time having regard to the terms of the contract”. The draft provision, and in particular the expression “a reasonable period of time”, was challenged at the second Conference discussion as too indefinite for a Convention, but the proposal to transfer this provision from the Convention to the Recommendation was opposed by the Worker members and finally rejected; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 463, and ILC, 32nd Session, 1949, *Record of Proceedings*, p. 508.

¹¹⁶ (1), ss. 69(2), 83(2), 172(4). This is also the case in *Belarus* (1), s. 77; *Chile* (1), s. 163; *Estonia* (1), s. 74(2); (2), s. 32(1); *Kyrgyzstan* (1), s. 238(1); *Slovakia* (1), s. 129(3); *Zambia* (1), s. 48(4). In *Namibia* (1), s. 36(1), the remuneration payable to an employee upon termination of the employment contract must be paid on the day on which the contract is terminated not later than one hour after the completion of the ordinary working hours.

¹¹⁷ (1), ss. 77(1), 78(1). The Employment Act specifies, however, that where it is not so practicable, payment shall be made as soon as it is reasonably practicable to do so.

¹¹⁸ (2), ss. 467, 477. The payment shall be made at the time of the act of termination of the contract of employment.

¹¹⁹ (1), s. 65.

¹²⁰ (1), s. 119(4). If this is not possible, however, because of the system used to calculate wages, the employer must pay the wages not later than the next regular pay day after the day of termination.

¹²¹ (1), ss. 19, 35(d).

¹²² In Tasmania, for instance, see Civil Construction and Maintenance Award, s. 28(c); Building and Construction Industry Award, s. 30(g); Hospitals Award, s. 39(g); Broadcasting and Television Award, s. 28(c).

termination. In *Hungary*,¹²³ *Lithuania*,¹²⁴ *Republic of Moldova*¹²⁵ and *Tajikistan*,¹²⁶ the worker must be paid his work wages and other emoluments on the last day spent at work. In *Nigeria*¹²⁷ and the *United Republic of Tanzania*,¹²⁸ all wages and benefits due must be paid on or before the expiry of any period of notice given by either party to a contract. The employer is bound to pay to the worker not later than the date of expiration of the notice all remuneration due at that date, while in cases where no notice is required, the payment should be made not later than the next working day after the termination.

386. Similar legal provisions exist in other countries stipulating that any outstanding wage payments must be settled as soon as employment ceases. This is the case, for instance, in *Benin*,¹²⁹ *Congo*,¹³⁰ *Mauritania*¹³¹ and *Senegal*,¹³² although in disputed cases the employer may obtain authorization from the labour court to retain provisionally all or part of the attachable fraction of the sums payable. In the United States,¹³³ some state labour laws require the payment of final paychecks immediately upon termination or at the time of discharge.

¹²³ (1), s. 97. The legislation in the *Russian Federation* (1), s. 140 and *Ukraine* (1), s. 116, provides that in case of the dismissal of a worker, all amounts due should be paid on the day of discharge, or if the worker did not work on that day, not later than the following day upon the presentation by the dismissed worker of a settlement request. If a dispute arises with regard to the amount of wages due, the enterprise is bound to pay at least the non-disputed amount.

¹²⁴ (2), s. 11.

¹²⁵ (1), s. 104; (2), s. 19(7).

¹²⁶ (1), s. 108.

¹²⁷ (1), s. 11(7). See also *Ghana* (1), s. 33(8).

¹²⁸ (2), s. 31(4).

¹²⁹ (1), s. 222. This is also the case in *Burkina Faso* (1), s. 113; *Cameroon* (1), s. 68(3); *Central African Republic* (1), s. 105; *Chad* (1), s. 261; *Comoros* (1), s. 104; *Côte d'Ivoire* (1), s. 32(7); *Djibouti* (1), s. 100; *Gabon* (1), s. 152; *Guinea* (1), s. 215; *Mali* (1), s. L.103; *Niger* (1), s. 162; *Rwanda* (1), s. 97; *Togo* (1), s. 96bis. In *Zimbabwe* (1), s. 13(1), all wages and benefits due upon termination of employment must be paid as soon as reasonably practicable after the worker's dismissal, resignation, incapacitation or death, as the case may be. In *Finland* (1), Ch. 2, s. 14, the law provides that if payment of a debt arising from the termination of the employment relationship is delayed, the employee is entitled to full pay for the waiting days up to a maximum of six calendar days. See also *China* (1), s. 9, and *Greece* (1), s. 655.

¹³⁰ (1), s. 88.

¹³¹ (1), s. 90.

¹³² (1), s. L.115.

¹³³ See, for instance, *Arkansas* (8), s. 11-4-405(a), (b); *Hawaii* (16), s. 388-3; *Illinois* (18), s. 115/5; *Massachusetts* (27), s. 148; *Missouri* (32), s. 290.110; *Nevada* (35), s. 608.020. Similarly, in *Oregon* (45), s. 652.140, payment is due no later than the end of the first business day after the discharge.

387. In other countries, the law distinguishes between the end of an employment contract and the termination of an employment relationship at the worker's own initiative. In Bahrain,¹³⁴ Egypt¹³⁵ and the Syrian Arab Republic,¹³⁶ wages and all other amounts due to a worker whose employment has been terminated must be paid without delay or before the end of the next work day, except where the worker leaves employment of his own accord, in which case the employer may settle any dues within the next seven days. In Malaysia,¹³⁷ upon normal termination of a contract or where an employer terminates the contract without notice, payment of any wages due has to be made not later than the day of termination, whereas in the case of an employee terminating the contract without notice, payment must be made not later than the third day after the day on which the contract was terminated. In Mauritius,¹³⁸ in the event of termination without notice, any remuneration due must be paid not later than two weekdays after the termination. In the United States,¹³⁹ some state labour laws provide that, when an employee is discharged from the service of an employer, all wages due must be paid immediately upon separation or no later than the next business day or within 24 hours. In contrast, when an employee voluntarily quits the service of an employer, he must receive any outstanding pay in full on the next regular pay day.

388. It should be noted that even in those cases where no immediate payment on the day of termination is required, existing regulations provide for

¹³⁴ (1), s. 72. This is also the case in *Libyan Arab Jamahiriya* (1), s. 32(4); Oman (1), s. 56; Qatar (1), s. 30; Saudi Arabia (1), s.117; Singapore (1), ss. 22, 23(2). Similarly, in *Yemen* (1), s. 65, payment is due on the day of termination unless the worker voluntarily leaves the service, in which case the wages must be paid within six days of the date of the worker leaving the service. Moreover, in the Canadian province of Alberta (4), ss. 9, 10, when an employer or an employee terminates employment by giving a termination notice, earnings must be paid not later than three consecutive days after the last day of employment, whereas in case of termination when no termination notice is required, payment is due within ten consecutive days after the last day of employment. In the province of British Columbia (6), s. 18, any outstanding payment must normally be paid 48 hours after the employer terminates the employment or within six days when the employee terminates the employment.

¹³⁵ (1), s. 38.

¹³⁶ (1), s. 48.

¹³⁷ (1), ss. 20, 21.

¹³⁸ (1), s. 11.

¹³⁹ This is the case, for instance, in Colorado (10), s. 8-4-104(1)(a), (b); Connecticut (11), s. 31-71c(a), (b); District of Columbia (14) s. 32-1303; Montana (33), s. 39-3-205(1), (2); Utah (52), s. 34-28-5(1), (2). The situation is similar in Alaska (5), s. 23.05.140(b); Arizona (7) s. 23-353(A), (B); New Hampshire (36), s. 275:44(I), (II); Texas (51), s. 61.014; and West Virginia (57), s. 21-5-4(b), (c), where in the case of dismissal an employee must be paid all wages and compensation due within three to six working days, whereas in the case of resignation, payment is due at the next regular pay day.

the final settlement of all outstanding wage payments within a very short period of time, normally not exceeding one week from the date of termination. For example, in the *Democratic Republic of the Congo*¹⁴⁰ and *Sri Lanka*,¹⁴¹ any amount remaining due under a contract of employment on the termination of the worker's service is payable within the next two working days. In Thailand,¹⁴² upon termination of employment the employer is bound to pay the employee all wages, overtime pay, holiday pay and holiday overtime pay to which the employee is entitled within three days from termination, while in Luxembourg,¹⁴³ any outstanding payment must be made within five days from termination. In *Israel*,¹⁴⁴ upon cessation of employment, the worker's wage has to be paid at the time at which it would have normally become payable if the worker had continued to be employed.

389. In *Iraq*¹⁴⁵ and *Sudan*,¹⁴⁶ the worker must receive all entitlements within one week from the date of termination of the contract of employment. In Canada,¹⁴⁷ depending on the jurisdiction and on the circumstances, the time

¹⁴⁰ (1), s. 81. See also *India* (1), s. 5(2); (3), s. 21(1)(ii).

¹⁴¹ (1), s. 19(1)(c); (2), s. 2(c).

¹⁴² (1), s. 70. The situation is similar in the Australian state of Queensland (7), s. 393(6).

¹⁴³ (2), s. 40(2).

¹⁴⁴ (1), s. 12. Similarly, in *Belgium* (1), s. 11, *Malta* (1), s. 28(2), and United Kingdom: Gibraltar (11), s. 19(3), any outstanding wage payment is to be made without delay and in any event by the first pay day following the termination of the contract of employment. In the United States, several state laws provide for payment of all wages due on the next regularly scheduled pay day; see, for instance, Delaware (13), s. 1103(a); Kansas (21), s. 44-315; New Jersey (37), s. 34:11-4.3; North Carolina (40), s. 95-25.7 and (41), s. 13-12.0308; North Dakota (42), s. 34-14-03; Oklahoma (44), s. 40-165.3; Rhode Island (47), s. 28-14-4(a); South Dakota (49), ss. 60-11-10, 60-11-11; Virginia (54), s. 40.1-29(A.1); Washington (55), s. 49.48.010; Wisconsin (58), s. 109.03(2). In other states, any unpaid wages must be paid by the earlier of the next regularly scheduled pay day or a period of ten to 15 days following the date of dismissal or termination; see, for instance, Idaho (17), s. 45-606; Kentucky (22), s. 337.055; Louisiana (24), s. 631(A)(1)(a); Maine (25), s. 626. Moreover, in Wyoming (59), s. 27-4-104(a), wages must be paid within five days of the date of termination, while in Michigan (28), s. 408.475, payment is due as soon as the amount can with due diligence be determined.

¹⁴⁵ (1), s. 48. Similarly, in *Viet Nam* (1), s. 43; (2), s. 11, each party is responsible for the settlement of all outstanding payments to the other party within seven days from the date of termination of a labour contract, although in special cases this period may be extended to 30 days. In *Japan* (2), s. 23(1), upon a worker's death or leaving of employment, the employer is required to pay any wages, security deposits, savings and other funds and valuables to which the worker is rightfully entitled within seven days. Similarly, in the Republic of Korea (1), s. 36, in the case of the worker's retirement, payment of all wages, compensations and other money or valuables must be made within 14 days.

¹⁴⁶ (1), s. 35(7).

¹⁴⁷ In Newfoundland and Labrador (9), s. 33(2), and Ontario (14), s. 11(5), payment is due within one week, in Manitoba (7), s. 86(1)(b) within ten days, and in Saskatchewan (17), s. 48(2)

frame within which the final settlement of wages must take place varies from seven to 30 days following termination. Finally, in *Argentina*,¹⁴⁸ *Cuba*,¹⁴⁹ *Guatemala*,¹⁵⁰ *Islamic Republic of Iran*,¹⁵¹ *Nicaragua*,¹⁵² *Paraguay*¹⁵³ and *Turkey*,¹⁵⁴ the legislation merely requires wages and other workers' benefits to be paid in full in the event of termination of a contract of employment, without expressly providing that such payment be made promptly or within a reasonably short period of time. Mention should also be made of *Ecuador*, where according to the Government's earlier reports, the final settlement of wages upon termination of the employment relationship is regulated under the internal rules of each enterprise.

390. In other countries, the national laws and regulations do not contain provisions directly regulating the question of the final settlement of wages, other than providing for dispute settlement procedures applicable in cases of unpaid wages. This is the case, for example, in *Algeria*, *Austria*, *Bahamas*, *Bulgaria*, *Dominica*, *Lebanon*, *Madagascar*, *Mexico*, *Philippines*, *Poland*, *Romania* and *Tunisia*. It is assumed in such cases that the obligations placed on establishments to pay wages at the proper time effectively ensure prompt settlement of any wage due upon the termination of employment.¹⁵⁵

within 14 days after the day of termination. In addition, in New Brunswick (8), s. 37, all wages earned but not yet paid at the time of termination must be paid not later than at the time the employee would have been paid had he continued to be employed and in no case later than 21 days after the last day of employment, while in Prince Edward Island (15), s. 30(5), the law stipulates that any pay to which an employee is entitled on termination of employment must be paid by the employer no later than the last day of the next pay period.

¹⁴⁸ (1), ss. 156, 231-233, 245-247, 250-251.

¹⁴⁹ (1), s. 60. However, the Government reports that outstanding payments are settled immediately upon termination of the employment contract.

¹⁵⁰ (2), s. 99.

¹⁵¹ (1), s. 22.

¹⁵² (2), ss. 42, 77.

¹⁵³ (1), s. 244.

¹⁵⁴ (1), s. 26.

¹⁵⁵ For example, in *France*, there is no legal provision expressly requiring the prompt settlement of all wages due upon the termination of a contract of employment, but the Government has taken the view that this is implied by the application of the general principles of French law. The Government of the *Netherlands* has stated that, in view of the maximum wage intervals prescribed in the national legislation, it is not considered necessary to set out any specific provisions regarding the final settlement of all wages due upon the termination of a contract of employment. The situation is similar in *Spain* where, according to information supplied by the Government, the final settlement of wages is regulated under the general provisions dealing with pay intervals. In *Italy*, the question is normally dealt with in collective agreements and the Government has reported that in the absence of specific legal provisions the presumption is that payment of all amounts due is to be made as promptly as possible.

In *Barbados*¹⁵⁶ and *Guyana*,¹⁵⁷ the law prescribes that every employee is entitled to recover from the employer the whole or so much of the wages earned, exclusive of sums lawfully deducted, as may not have been actually paid by the employer in money. In New Zealand,¹⁵⁸ where there has been a default in payment to an employee of any wages or other money payable under an employment agreement, the sums due may be recovered by the employee through an action taken in the Employment Relations Authority, which is an investigative body that has the role of resolving employment relationship problems.

391. In recent years, the Committee has been confronted with a number of cases of non-compliance with Article 12, paragraph 2, of the Convention, consisting of the failure of state authorities to take appropriate action to ensure the final settlement of workers' wage claims upon termination of their contracts. The most serious of these cases relate to the situation of migrant workers who in some cases have been driven out of the receiving country in large numbers for economic or political reasons, without being paid the wages that they have already earned. For example, in October 2000, it was reported by the International Confederation of Free Trade Unions (ICFTU) that thousands of sub-Saharan migrant workers in the *Libyan Arab Jamahiriya*, mostly Nigerians and Ghanaians, had been expelled from the country without receiving the wages owed to them, and that the Libyan authorities had suggested to the deported workers that they should claim their unpaid wages from their own government. The Committee emphasized, in this regard, that the obligation arising out of Article 12, paragraph 2, of the Convention is incumbent upon the employer(s) concerned and that the Government could not therefore ask workers to address their requests for the final settlement of their wages to their governments, but must ensure that the wages due are duly paid in full.¹⁵⁹

392. A few years earlier, in 1995, thousands of Palestinian workers were forced to leave the *Libyan Arab Jamahiriya* without receiving any payment of

¹⁵⁶ (1), s. 6. Similarly, in *Cyprus*, wages due on termination of a contract of employment may be recovered by civil action in case of default on the part of the employer.

¹⁵⁷ (1), s. 19.

¹⁵⁸ (5), ss. 131(1), 157, 161(1)(g). The Government has indicated that there is no legislative provision laying down when the final settlement of wages upon termination of employment must occur but that, as a matter of practice, any outstanding wages and holiday pay are paid forthwith. Similarly, the Government of Germany has reported that there are no particular legislative provisions reflecting this Article of the Convention, but any worker who upon termination of the employment contract is entitled to arrears of earned income can bring these claims before a labour tribunal.

¹⁵⁹ See RCE 2001, 359 (*Libyan Arab Jamahiriya*) and RCE 2002, 331 (*Libyan Arab Jamahiriya*).

their entitlements. The situation was considered by the Conference Committee in June 1996 and the Government confirmed on this occasion its intention of fully meeting all the entitlements of those Palestinians who had been working with valid employment permits and formal contracts.¹⁶⁰ In this connection, the Committee of Experts has pointed out that the Convention applies to all persons to whom wages are paid or payable, irrespective of the characteristics of their contracts, formal or non-formal, and that the Government is therefore under the obligation to ensure the final settlement of wages at the expiry of a contract for all Palestinian workers, including those without employment permits and formal contracts.¹⁶¹

393. A similar situation arose in *Iraq* in 1991 with regard to foreign workers who left the country both before and after the invasion of Kuwait. According to the Government, the workers who left following the imposition of the embargo, which resulted in the freezing of Iraqi assets in foreign banks, received their wages in conformity with the law with the exception of the percentage of their wages which, under the terms of their contracts, had to be deposited in foreign currency. This case was discussed in June 1992 by the Conference Committee, which pointed out that under the provisions of the Convention foreign workers should not be the victim of political difficulties in the region between the Government and other countries and that therefore the Government remained responsible for the settlement of outstanding payments to foreign workers irrespective of the embargo and the freezing of Iraqi assets.¹⁶²

394. In November 1990, a representation was made by the Federation of Egyptian Trade Unions under article 24 of the Constitution alleging non-observance of the Convention by *Iraq* for failure to honour the labour contracts of Egyptian workers employed in *Iraq* both before and after the invasion of Kuwait. The Government was reportedly prepared to reimburse all the amounts due in the form of barter, i.e. in oil or any other goods requested by the Egyptian Government. The Governing Body came to the conclusion that the non-payment of all or part of wages at regular intervals, for whatever reasons, was not in conformity with Article 12 of the Convention, even more so as part of the arrears

¹⁶⁰ See ILC, 83rd Session, 1996, *Record of Proceedings*, p. 14/87.

¹⁶¹ See RCE 1996, 180 (*Libyan Arab Jamahiriya*) and RCE 1997, 223 (*Libyan Arab Jamahiriya*). It should also be recalled that, following the expulsion of many thousands of foreign workers, in particular workers of Egyptian and Tunisian nationality, from *Libyan Arab Jamahiriya* in August 1985, a complaint and a representation were filed by the Government of *Tunisia* and the Egyptian Trade Union Federation respectively alleging non-observance of the Convention by *Libyan Arab Jamahiriya*. The two procedures were considered together for a time. The dispute was finally settled through a series of discussions under the Office's auspices, as a result of which the complaint was withdrawn in 1987 and the representation was withdrawn some four years later, in 1991; see GB.251/20/7; GB.240/14/20; GB.232/17/32.

¹⁶² See ILC, 79th Session, 1992, *Record of Proceedings*, p. 27/71.

was not provoked by the sanctions imposed on *Iraq*, but preceded the decision to apply an embargo. It also considered that, despite its limited alternatives at the time, the Government of *Iraq* should have found a means of ensuring that the workers receive the payments due to them.¹⁶³

395. Significant problems concerning the settlement of outstanding wage payments were also experienced by Senegalese workers employed in *Mauritania*, who fled the country following the violent incidents of April 1989 and the ethnic tensions between the two countries. In response to the representation made by the National Confederation of Workers of Senegal (CNTS) in 1990 under article 24 of the Constitution, alleging non-observance of the Convention by *Mauritania*, the Government argued that the Senegalese workers were repatriated at the express request of the Senegalese authorities and that employers could not be expected to pay wages to workers who had abandoned their duties and who were no longer present on Mauritanian territory. In its conclusions, the Governing Body noted that under Article 12, paragraph 2, of the Convention, a final settlement of the wages due must be made, whatever the cause of the termination of the employment contract, and also that the question of the nationality of the wage earner did not affect in any manner the application of the Convention.¹⁶⁴

396. The Conference Committee examined the same question in June 1995 and urged the Government of *Mauritania* to make serious and meaningful efforts to settle the wage entitlements of the aggrieved workers by receiving technical assistance from the ILO in the matter of the enforcement of the national law, which provided for the payment of wages due.¹⁶⁵ Given the Government's persistent failure to provide concrete proof of any progress in settling the wage debts to the workers concerned, even though the Government has recently alleged that all persons obliged to leave the country in 1989 have recovered their wages due since 1996, the Committee of Experts has recalled the conclusions adopted by the Governing Body to the effect that, in view of the circumstances in which the workers concerned left the country, it was very probable that final settlement of the wages due could not be made in accordance with the relevant provisions of the Convention or of national legislation, and that, consequently, the Government should take all the necessary measures to

¹⁶³ See GB.250/15/25, paras. 20-24. The Committee of Experts has been commenting on the measures to be taken following the recommendations of the tripartite committee referred to above and has urged the Government of *Iraq* to take appropriate steps to ascertain the number of workers concerned and the amounts owed to them, to effect payment of the amounts so determined and to report accordingly on the progress achieved; see RCE 1993, 246 (*Iraq*); RCE 1995, 229 (*Iraq*); RCE 2001, 358 (*Iraq*).

¹⁶⁴ See *Official Bulletin*, Vol. LXXIV, 1991, Supplement 1, Series B, paras. 68-71, p. 15.

¹⁶⁵ See ILC, 82nd Session, 1995, *Record of Proceedings*, p. 24/99.

establish or have established the amounts due, and to make or have made the final settlement of wages due.¹⁶⁶

397. Another case which has been the subject of observations by the ILO supervisory bodies arose in the context of a dispute between a multinational enterprise and its Congolese employees, who were dismissed when the company ceased all of its operations on the territory of *Congo* without paying the wages and the various supplements and benefits due. In 1994, the International Organization of Energy and Mines (OIEM) made a representation alleging non-observance of the Convention by *Congo* and reproaching the state authorities for not having taken appropriate action against the company's management for the infringement of the labour legislation. The Governing Body concluded that the Government had failed to ensure the effective application of the relevant provisions of the Convention and to discharge its obligation of preventing and punishing infringements by failing to use the legal means at its disposal in order to compel the defaulting employer to comply with the legislation in force. It recalled, in this respect, that it is for the competent authorities to take the necessary measures when the legislation is not applied and that public order may be jeopardized where they fail to do so.¹⁶⁷ Since the adoption by the Governing Body of these recommendations in 1996, the Committee of Experts has been following developments in the situation and urging the Government to adopt all the necessary measures to enable the employees concerned to recover promptly all sums due to them.¹⁶⁸

398. In conclusion, the Committee wishes to emphasize that the principle of the regular payment of wages, as set out in Article 12 of the Convention, finds its full expression not only in the periodicity of wage payments, as may be regulated by national laws and regulations or collective agreements, but also in the complementary obligation to settle swiftly and in full all outstanding payments upon the termination of the contract of employment.¹⁶⁹

¹⁶⁶ See RCE 1996, 181 (*Mauritania*) and RCE 2002, 332 (*Mauritania*).

¹⁶⁷ See GB.265/12/6, paras. 21-24. See also GB.268/14/6 on a related representation filed in 1997 by the Trade Union Confederation of Congo Workers (CSTC).

¹⁶⁸ See RCE 1997, 222 (*Congo*); RCE 1998, 208 (*Congo*); RCE 2001, 354 (*Congo*). The Committee has been addressing similar observations to other countries as regards the steps taken to ensure the application of the Convention with respect to final settlements upon termination of work contracts; see, for instance, RCE 1995, 227 (*Côte d'Ivoire*).

¹⁶⁹ For instance, the Committee has addressed direct requests in this sense to *Bolivia* in 1995 and *Venezuela* in 2001.

3. Place and time of the payment of wages

3.1. Payment of wages on working days and at or near the workplace

399. Article 13, paragraph 1, of the Convention requires the payment of cash wages to be made on working days only and at or near the workplace, except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award, or where other arrangements known to the workers concerned are considered more appropriate.¹⁷⁰

400. The Committee notes that Article 13, paragraph 1, of the Convention leaves considerable flexibility as to the means by which it is implemented since, apart from provisions in laws, regulations, collective agreements or arbitration awards, reliance may be placed upon other appropriate arrangements regarding the time and place of wage payment. The question possibly arises as to whether the payment of wages by postal or bank transfer would be consistent with the requirement of payment at or near the workplace. The Committee takes the view that any formal arrangements regulating the payment of wages by postal or bank transfer would appear to fall well within the exceptions permitted by Article 13, paragraph 1 (that is, exceptions “provided by national laws or regulations”), and would therefore pose no problem in regard to this Article.¹⁷¹

401. At another level, the requirement set out in Article 13, paragraph 1, of the Convention would seem to be of particular relevance with regard to certain systems of compulsory deferred payment of wages practised in respect of migrant workers. For instance, under the system which was reportedly formerly applied to migrant workers employed in South Africa and recruited from Lesotho, Malawi and Mozambique, 60 to 90 per cent of the wages earned were not paid directly to the migrant workers, but were transferred to their home countries as deferred pay which could only be received as a lump sum upon the completion of their contract. In this respect, the Committee considers that attention should be given first and foremost to the voluntary character of the

¹⁷⁰ In the text initially proposed by the Office, provision was made for payment on working days and at or near the workplace “except as may otherwise be authorized by the competent authority”; see ILC, 31st Session, 1948, Report VI(c)(2), pp. 83-84, 91. This wording was later changed to “except where otherwise appropriate”, but this was considered even more far-reaching and the text was once again redrafted to include a reference to exceptions regulated by law, agreement or award. The provision was further revised to ensure that other methods might be used only on condition that workers know in advance, by whatever means are considered appropriate, the place and dates of payment; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 463, and ILC, 32nd Session, 1949, *Record of Proceedings*, p. 509.

¹⁷¹ This question was considered in an informal opinion given by the Office in 1974 at the request of the Government of Japan.

deferred pay system, as well as to standards concerning the protection of wages, in particular the requirement of paying wages regularly and at the workplace.¹⁷² Reference should be made, in this respect, to the findings of the Commission of Inquiry regarding the application of the Convention by the *Dominican Republic* in respect of Haitian workers employed in sugar plantations. With respect to the imposed system of deferred payment of that part of cane-cutters' remuneration designated as "incentive pay", the Commission recommended its abolition and the incorporation of "incentive pay" into workers' wages to be paid regularly on the days fixed for that purpose. The Commission recognized that the plantations had an interest in being able to keep their workers for the duration of the harvest, and might wish to offer a material inducement to that end, but cautioned that "a bonus paid to a worker for staying throughout the harvest need not conflict with the Convention under consideration". The Commission further recognized that it was desirable to assist seasonal workers on the sugar plantations to put aside savings for their return home, on condition that this was done through the introduction of a voluntary savings scheme.¹⁷³

402. Analysis of the available information shows that in almost all countries there are regulations relating to the time and place of wage payments. In most countries, these regulations specify that wages must be paid at the place of employment where the actual work is performed and on working days only or, as is sometimes worded, they must not be paid on rest days. In certain cases, it is specified that wages may only be paid during working hours, and it is also permitted for wages to be paid near, rather than just at the workplace. This is the case, for instance, in *Austria*,¹⁷⁴ *Bahamas*,¹⁷⁵ *Bulgaria*,¹⁷⁶ *Cuba*,¹⁷⁷

¹⁷² For more on the deferred pay systems practised in South Africa, see W.R. Böhning (ed.): *Black Migration to South Africa*, ILO, 1981, pp. 117-130.

¹⁷³ See the Report of the Commission of Inquiry appointed under article 26 of the ILO Constitution to examine the observance of certain international labour Conventions by the Dominican Republic and Haiti with respect to the employment of Haitian workers on the sugar plantations of the Dominican Republic, *Official Bulletin*, Vol. LXVI, 1983, Special Supplement, Series B, paras. 541-542, p. 159.

¹⁷⁴ (7), s. 22(e). This is also the case in *Argentina* (1), s. 129; *Belgium* (1), ss. 13, 14; *Bolivia* (1), s. 53; *Botswana* (1), s. 79(1); *Ecuador* (2), ss. 86, 96; *France* (1), s. R.143-1; *Greece* (3), s. 2(1), (2); *Guyana* (1), s. 18(4); *Hungary* (1), s. 158(1), (2); *Iraq* (1), s. 42(1); *Kenya* (1), s. 4(2); *Lebanon* (1), s. 47; *Libyan Arab Jamahiriya* (1), s. 32; *Mauritius* (1), s. 8(4); *Republic of Moldova* (2), s. 19(1); (1), s. 103; *Panama* (1), s. 153; *Sudan* (1), s. 35(5), (6); *Swaziland* (1), s. 50(1); *Syrian Arab Republic* (1), s. 47; *United Republic of Tanzania* (1), s. 61(2); *Yemen* (1), s. 61; *Zambia* (1), s. 44(2).

¹⁷⁵ (1), s. 63(1). Contrary to previous legislation, the new Employment Act makes no provision as to the place of payment.

¹⁷⁶ (1), s. 270(1). No specific provision is made, however, for the payment of wages on working days only.

¹⁷⁷ (1), ss. 123, 124.

Egypt,¹⁷⁸ *Islamic Republic of Iran*,¹⁷⁹ *Malta*,¹⁸⁰ *Nicaragua*,¹⁸¹ *Philippines*,¹⁸² *Tunisia*¹⁸³ and *Venezuela*.¹⁸⁴ Specific legislative provisions requiring wages to be paid on working days and at the workplace are also found in Bahrain,¹⁸⁵ Kuwait,¹⁸⁶ Rwanda,¹⁸⁷ Saudi Arabia¹⁸⁸ and the United Arab Emirates.¹⁸⁹

403. In a number of countries, such as *Congo*,¹⁹⁰ *Gabon*¹⁹¹ and *Senegal*,¹⁹² the national legislation prescribes that the wages have to be paid, save in the case of *force majeure*, at the workplace or in the employer's office, if this is near the workplace, and may in no case be paid on the day on which the worker is entitled to rest. In the *Netherlands*¹⁹³ and *Suriname*,¹⁹⁴ the Civil Code provides that, unless the place of payment of wages is fixed by the contract or rules of employment or by custom, payment shall be effected at the place of work, or at the employer's office (if this is near the place where the majority of employees reside), or at the employee's home, at the choice of the employer.

¹⁷⁸ (1), s. 34.

¹⁷⁹ (1), s. 37. The Labour Code contains no provision on the place of wage payment, but the Government maintains that the requirement that wages should be paid during working hours implicitly means that the payment should be made at or near the workplace.

¹⁸⁰ (1), s. 19(3). There does not appear to exist, however, any provision in the labour legislation concerning the place of payment.

¹⁸¹ (1), s. 82(2); (2), 86.

¹⁸² (1), s. 104; (2), Bk. III, Rule VIII, s. 4(a). Payment in a place other than the workplace may be effected only: (i) if natural conditions render such payment impossible; (ii) when the employer offers free transport; or (iii) under any other analogous circumstances provided that the time spent by the employees in collecting their wages is considered as compensable working time.

¹⁸³ (1), s. 142. There appears to be no provision in the Labour Code relating to the place of wage payment.

¹⁸⁴ (1), ss. 151, 152.

¹⁸⁵ (1), s. 68.

¹⁸⁶ (1), s. 29.

¹⁸⁷ (1), s. 92.

¹⁸⁸ (1), s. 116.

¹⁸⁹ (1), s. 55.

¹⁹⁰ (1), s. 87(4), (5). This is also the case in *Benin* (1), s. 222(4); *Burkina Faso* (1), s. 112(4); *Cameroon* (1), s. 68(5); *Central African Republic* (1), s. 104(3); *Chad* (1), s. 258; *Comoros* (1), s. 103(4), (5); *Côte d'Ivoire* (1), s. 32.2; *Djibouti* (1), s. 99(4); *Guinea* (1), ss. 214, 215(4); *Mali* (1), s. L.102; *Mauritania* (1), s. 89(4), (5); *Niger* (1), s. 159; *Togo* (1), s. 95(4).

¹⁹¹ (1), s. 151(2).

¹⁹² (1), s. L.114(4), (5).

¹⁹³ (1), s. 1638K.

¹⁹⁴ (1), s. 1614K.

404. In *Israel*,¹⁹⁵ the law provides that payment is to be made at the place of work and not later than two hours after the termination of the work, unless the worker is employed on a late shift. Similarly, in *Mexico*,¹⁹⁶ *Norway*¹⁹⁷ and *Paraguay*,¹⁹⁸ salaries must be paid at or near the workplace during working hours or immediately after the end of working hours. In the *Russian Federation*,¹⁹⁹ *Ukraine*²⁰⁰ and *Venezuela*,²⁰¹ the Labour Code provides that if pay day falls on a public holiday or a weekend, labour wages must be paid on the preceding day. In contrast, in *Argentina*,²⁰² where pay day falls on a non-working day, payment shall be made on the next working day.

405. In certain countries, the general principle of wage payment on working days and at or near the workplace applies unless it is otherwise provided in national regulations, collective or individual agreements or arbitration awards. In the *Czech Republic*²⁰³ and *Slovakia*,²⁰⁴ for instance, wages are to be paid during working time and at the workplace, unless otherwise agreed in the employment contract or collective agreement. In *Botswana*,²⁰⁵ payment may be made elsewhere than at or near the place of employment with the prior consent of the employee concerned. In *Guyana*,²⁰⁶ wages are to be paid

¹⁹⁵ (1), s. 15. Similarly, in *Chile* (1), s. 56, payment is due on a working day, that is from Monday to Friday, at the workplace and within one hour of the termination of the work, unless otherwise agreed by the parties to the employment relationship.

¹⁹⁶ (2), ss. 108, 109. This is also the case in *Brazil* (2), s. 465; *Colombia* (1), s. 138(1); *Costa Rica* (1), s. 170; *Dominican Republic* (1), s. 196; *El Salvador* (2), ss. 128, 131; *Guatemala* (2), s. 95; *Guinea-Bissau* (1), ss. 103(1), 104(3); *Honduras* (2), s. 369.

¹⁹⁷ (1), s. 55(1). See also *Mozambique* (1), s. 53(1)(b).

¹⁹⁸ (1), s. 236.

¹⁹⁹ (1), s. 136(8). This is also the case in *Azerbaijan* (1), s. 172(3); *Belarus* (1), ss. 73, 75; *China* (1), s. 7; *Estonia* (2), s. 33; *Finland* (1), Ch. 2, s. 15; *Kyrgyzstan* (1), ss. 233(4), 235(1); *Tajikistan* (1), s. 108.

²⁰⁰ (2), s. 24(1), (3).

²⁰¹ (1), s. 151.

²⁰² (1), s. 129. This is also the case in *Slovenia* (1), s. 134(3).

²⁰³ (1), s. 120(3). This is also the case in *Cape Verde* (1), s. 120(1); *Estonia* (2), s. 31(2); *Guinea-Bissau* (1), s. 103(1); *Lithuania* (2), s. 11. Similarly, in *Poland* (1), s. 86(1), the place, date and time of payment are to be specified in the works regulations, while in *Indonesia* (2), s. 16, the wage is to be paid at the place where the work is usually performed, or at the office of the enterprise, unless otherwise determined in the contract or company regulations.

²⁰⁴ (1), s. 130(4).

²⁰⁵ (1), s. 79(1). Similarly, in *Singapore* (1), s. 25(1), payment of salary must be made on a working day and during working hours at the place of work or at any other place agreed upon between the employer and the employee, while in the *Democratic Republic of the Congo* (1), s. 79(2), wages are to be paid at the agreed time and place.

²⁰⁶ (1), s. 18(4).

on working days only and at or near the workplace, except where there exist more appropriate arrangements. In *Mauritius*,²⁰⁷ an employer may pay remuneration to a worker other than within working hours and at or near the place of work only with the Permanent Secretary's written consent. In *Spain*,²⁰⁸ the national legislation merely prescribes that wages shall be paid punctually on the agreed or customary date and at the agreed or customary place.

406. The issue of the payment of wages on working days and at or near the workplace is not specifically addressed in the general labour legislation of *Algeria, Barbados, Cyprus, Dominica, Malaysia, Nigeria, Romania, Sri Lanka, Turkey, Uganda* and *Uruguay*.²⁰⁹ Nor are any relevant provisions contained in the laws and regulations of Croatia, Ghana, Japan, Jordan, Republic of Korea, Namibia and Peru. In certain countries, such as Seychelles²¹⁰ and Thailand,²¹¹ national laws or regulations require the payment of wages in cash to be made at or near the place of employment, but make no specific provision for payment on working days only. In contrast, the wage protection legislation in India,²¹² Morocco²¹³ and Switzerland,²¹⁴ stipulates that all payments of wages must be made on a working day, but contains no regulation concerning the place of payment. In Australia, there are no specific legislative provisions dealing with the time or place of payment. The only relevant provision to be found in many industrial awards at the state level is the requirement that employees kept waiting for their pay on pay day must be paid at ordinary or overtime rates for the time spent, except where the delay occurs for reasons beyond the employer's

²⁰⁷ (1), s. 8(4). Similarly, in Qatar (1), s. 29(3), the payment of wages must be effected on a work day and during working hours and at the usual workplace, or at any other place approved by the Director of Labour.

²⁰⁸ (1), s. 29. Similarly, in Slovenia (1), s. 135(1), payment is due by the end of the day of payment at the usual place of payment.

²⁰⁹ However, according to the Government's report, as a matter of practice, the payment of wages is generally made at the workplace or at a bank near the workplace or the worker's residence.

²¹⁰ (1), s. 32(1)(a).

²¹¹ (1), ss. 55, 77. The law further specifies that, if the payment is to be made elsewhere, the written consent of the employee must be obtained. See also Viet Nam (1), s. 59(1).

²¹² (1), s. 5(4). This is also the case in Myanmar (1), s. 5(4); United Kingdom: Gibraltar (11), s. 17(2); Jersey (17), s. 10; *Montserrat* (21), s. 16(1); Virgin Islands (22), s. C34(2).

²¹³ (1), s. 8.

²¹⁴ (2), s. 323b.

control.²¹⁵ In the United States,²¹⁶ at the federal level, there is no provision that sets any specific requirements on time and place of payment of wages, while at the state level, there is limited number of provisions requiring wages to be paid at the employee's regular place of employment during regular employment hours unless otherwise agreed upon by the employer and the employee. In many cases, state laws merely provide that, if the regular pay day of an employee is a non-workday, an employer has to pay the employee on the preceding workday. Similarly, in Canada,²¹⁷ there exist few legislative provisions specifically requiring the payment of wages on a working day and at the workplace.

3.2. Prohibition of the payment of wages in taverns, retail shops and places of amusement

407. In the interest of protecting the workers' earnings against possible abuse, the Convention prohibits the payment of wages in certain places, such as taverns or similar establishments, and provides that, if necessary, such prohibition should be extended to such other places as commercial shops and places of amusement. Article 13, paragraph 2, therefore calls for the existence of a specific provision as regards taverns or similar establishments, enforceable by adequate penalties or other appropriate remedies. The means used to enforce such a prohibition is of course a question for the competent authority to decide, the only condition being that whatever arrangements are considered appropriate to achieve this objective must be effective. As for the extension of this prohibition to shops, retail stores and places of amusement, this is required only

²¹⁵ See, for instance, the Tasmanian Child Care and Children's Services Award, s. 3(a); Transport Workers General Award, s. 32(h); Automotive Industries Award, Part III, s. 7(c); Cleaning and Property Services Award, s. 23. However, payment in full during ordinary working hours is expressly provided for in certain awards, such as the Clothing Industry Award, s. 23(a); Civil Construction and Maintenance Award, s. 28(b); Wireworking Award, s. 24(c); Dentists Award, s. 21; Independent Schools (Teachers) Tasmania Award, Part III, s. 4(a). More rarely, provision is made for the payment of wages at the place of employment, for instance in the Entertainment Award, s. 19.

²¹⁶ See, for instance, Arkansas (8), s. 11-4-402(b); Connecticut (11), s. 31-71b(b); Delaware (13), s. 1102(b); Iowa (20), s. 91A.3(3); Maryland (26), s. 3-502(b); Massachusetts (27), s. 151; Minnesota (29), s. 181.10; New Jersey (37), s. 34:11-4.2; Texas (51), s. 61.017; Utah (52), s. 34-28-3(1)(c); Wyoming (59), s. 27-4-101(a).

²¹⁷ See, for instance, Newfoundland and Labrador (9), s. 34(1); Ontario (14), s. 11(3); Quebec (16) ss. 44, 45; Saskatchewan (17), s. 48(3).

where this appears necessary to prevent abuse, and is therefore a matter to be determined in the light of actual practice.²¹⁸

408. In certain countries, effect is given to the requirements of Article 13, paragraph 2, of the Convention by means of a formal prohibition on the payment of wages in places for the sale of spirits, intoxicating liquors or other alcoholic drinks, and similar establishments such as bars and coffee shops. This is the case, for instance, in *Austria*,²¹⁹ *Kenya*²²⁰ and *Nicaragua*.²²¹ In other countries, the payment of wages in places of amusement is also prohibited. In *Hungary*,²²² for example, the payment of wages is prohibited in bars and places of entertainment, while in the *Philippines*,²²³ no payment may be made in bars, nightclubs, dance halls and places where money games are played.

409. In other countries, however, this prohibition is not limited to establishments where alcohol is consumed and places of entertainment, but extends to any shops or stores for the retail sale of merchandise. The only persons who are not covered by the prohibition against the payment of wages in commercial shops are those normally employed in such shops. This is the case,

²¹⁸ An informal opinion to this effect was given by the Office in 1954 at the request of the Government of the Federal Republic of Germany; see *Official Bulletin*, Vol. 37, 1954, p. 390. It should be recalled, in this respect, that the text of this provision was amended at the first Conference discussion specifically for the purpose of making it clear that, while the payment of wages in places where alcoholic drinks are served is categorically prohibited, the restriction in respect of shops and places of amusement is intended as a safeguard against possible abuses in such localities; see ILC, 31st Session, 1948, *Record of Proceedings*, p. 463.

²¹⁹ (9), s. 78(6); (10), s. 206(b). This is also the case in *Ghana* (1), s. 53(5); *Greece* (3), s. 2(1); *Guyana* (1), s. 26; *Israel* (1), s. 15; *Netherlands* (3), s. 19(1). Similarly, in the United Kingdom: *Montserrat* (21), s. 14, and *Virgin Islands* (22), s. C34(3), no wage payment may be made within any shop or place for the sale of any spirits, wine, beer or other spirituous or fermented liquor.

²²⁰ (1), s. 4(3).

²²¹ (2), s. 86.

²²² (1), s. 158(1). This is also the case in *Cape Verde* (1), s. 120(2), and *Guinea-Bissau* (1), s. 103(4).

²²³ (2), Bk. III, Rule VIII, s. 4(b). Similarly, in *Namibia* (1), s. 37(e) employers are prohibited from paying any employee in a shop, bottle store or other place where intoxicating liquor is stored or sold or any place of amusement.

for instance, in *Argentina*,²²⁴ *Belgium*,²²⁵ *Côte d'Ivoire*,²²⁶ *Ecuador*,²²⁷ *France*,²²⁸ *Guatemala*,²²⁹ *Mauritius*,²³⁰ *Turkey*²³¹ and *Venezuela*.²³²

410. The legislation in some countries contains no express prohibition of the payment of wages in taverns or other similar establishments, as required under this Article of the Convention. This is the case in *Azerbaijan*, *Belarus*, *Brazil*, *Bulgaria*, *Cuba*, *Cyprus*, *Czech Republic*, *Dominican Republic*, *Italy*, *Kyrgyzstan*, *Republic of Moldova*, *Norway*, *Paraguay*, *Romania*, *Russian Federation*, *Slovakia*, *Spain*,²³³ *Sri Lanka*, *Tajikistan*, *Uganda* and *Uruguay*. Nor is this point addressed in the labour laws of Australia, Bahrain, China, Croatia, Indonesia, India, Japan, Republic of Korea, Kuwait, Oman, Qatar, Saudi Arabia, Seychelles, Singapore, Switzerland, Thailand, United Arab Emirates and Viet Nam. The Government of New Zealand has reported that, even though there is no specific legislative provision concerning the time and place of wage payments, the payment of wages in taverns, retail stores or places of amusement is not really an issue in the country as payment is increasingly effected by direct credit to a bank account. Similarly, the Government of Canada has reported that there are no specific provisions in Canadian legislation prohibiting the payment of wages in taverns or similar establishments, in retail stores and places of

²²⁴ (1), s. 129. This is also the case in *Bahamas* (1), s. 63(2); *Barbados* (1), s. 14; *Benin* (1), s. 222(4); *Bolivia* (1), s. 53; *Botswana* (1), s. 86(1); *Burkina Faso* (1), s. 112(4); *Cameroon* (1), s. 68(5); *Central African Republic* (1), s. 104(3); *Chad* (1), s. 258; *Colombia* (1), s. 138(2); *Comoros* (1), s. 103(5); *Congo* (1), s. 87(4); *Costa Rica* (1), s. 170; *Democratic Republic of the Congo* (1), s. 79(3); *Djibouti* (1), s. 99(4); *Dominica* (1), s. 14; *El Salvador* (2), s. 129; *Gabon* (1), s. 151(2); *Guinea* (1), s. 214; *Honduras* (2), s. 369; *Luxembourg* (1), s. 3; *Malaysia* (1), s. 28; *Mali* (1), s. L.102; *Malta* (1), s. 19(3); *Mauritania* (1), s. 89(4); *Mexico* (1), s. 123A-XXVII(d); *Morocco* (1), s. 8; *Niger* (1), s. 159; *Nigeria* (1), s. 3; *Rwanda* (1), s. 92; *Senegal* (1), s. L.114(4); *Swaziland* (1), s. 49; *United Republic of Tanzania* (1), s. 66(1); *Togo* (1), s. 95(4); *Tunisia* (1), s. 142; *Ukraine* (2), s. 24(3); *United Kingdom*: *Gibraltar* (11), s. 17(2); *Zambia* (1), s. 44(4). Similarly, in *Germany* (1), s. 115a, wage payment cannot be made in restaurants and sales points without the authorization of the competent authorities. However, the Government has stated that this provision is deemed outmoded and is to be repealed.

²²⁵ (1), s. 14.

²²⁶ (1), s. 32.2.

²²⁷ (2), s. 96.

²²⁸ (1), s. R.143-1.

²²⁹ (2), s. 95.

²³⁰ (1), s. 8(5).

²³¹ (1), s. 26.

²³² (1), s. 152.

²³³ (14), s. 54; (15), final provisions. By legislation enacted in 1994, the express provision prohibiting the payment of wages in places of amusement, canteens or shops has been repealed. However, according to the Government's earlier reports, it is not customary to pay wages in such places.

amusement, since the situation in Canada does not warrant such prohibitions. In this respect, the Committee wishes to recall that, even though in certain countries there may be little or no evidence of wages being paid in taverns or similar establishments, the Convention categorically prohibits the payment of wages in such places and consequently requires appropriate and effective measures for its implementation.

* * *

411. In conclusion, in the Committee's view, the situation with regard to Article 12 of the Convention typifies cases in which there is at times an unfortunate gulf between legislative conformity with a Convention and the effect given in practice to its provisions. Nowhere would these shortcomings appear to be more striking than with regard to the principle of the regular payment of wages. Having reviewed the information available concerning the accumulation of wage arrears in different parts of the world, the Committee deeply regrets that the non-payment or delayed payment of wages appears to have reached alarming proportions in parts of Africa, in Central and Eastern Europe with little or no sign of abatement and is still present in some of the ailing economies in Latin America. The Committee is particularly concerned at the emergence of a trend which consists of tending to consider the payment of workers' wages as an option rather than an obligation, or as a duty which is only to be honoured if and when other conditions so permit. The practices of barter and payment in kind often amplify this distortion of the concept of labour remuneration by seeming to imply that, where workers are denied their contractually agreed dues, they should content themselves with whatever form and means of payment is available.

412. Under the circumstances, the Committee thinks it essential to reaffirm the fundamental nature of wages as being very similar to maintenance allowances, with all the specific guarantees that flow from such a principle. None of the reasons normally advanced by way of excuse, such as the implementation of structural adjustments or "rationalization" plans, falling profit margins or the weakness of the economic situation, can be accepted as valid pretexts for the failure to ensure the timely and full payment to workers of the wages due for work already performed or services already rendered, in accordance with the requirements of Article 12 of the Convention. The financial straits of a private enterprise or a public administration may be addressed in many ways, but not the deferred payment or non-payment of the outstanding wages due to workers. Based on the lessons drawn from recent experiences, the Committee recalls that the deferred payment of wages is a particularly resistant problem that requires close supervision, particularly through the reinforcement of inspection services; the imposition of effective and truly dissuasive sanctions; reasonable compensation for the loss incurred by workers whose wages have not

been paid; continuous social dialogue; a wide range of targeted legislative and other measures; and above all a strong political commitment to break the vicious spiral of rising wage arrears, demonetized transactions and deteriorating living standards.

413. As regards the requirements of the Convention with respect to the place and time of the payment of wages, the Committee notes that these appear to be globally accepted and applied without any particular difficulty. Moreover, the safeguards laid down in the Convention prohibiting the payment of wages in taverns, places of amusement and also, under certain conditions, in shops or stores, would appear somewhat less relevant today in most of the more developed countries, especially in view of the increasing use of non-cash methods of payment, such as direct bank transfers. But these provisions are undoubtedly still relevant in the context of other countries, notably with regard to labour remuneration practices concerning agricultural workers.

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