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Information and reports on the application  
of Conventions and Recommendations

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

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

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## INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>7</sup> See *General Survey of the Reports on the Minimum Wage-Fixing Machinery Convention (No. 26) and Recommendation (No. 30), 1928; the Minimum Wage Fixing Machinery (Agriculture) Convention (No. 99) and Recommendation (No. 89), 1951; and the Minimum Wage Fixing Convention (No. 131) and Recommendation (No. 135), 1970*, ILC, 79th Session, 1992, Report III (Part 4B); *General Survey of the Reports on the Equal Remuneration Convention (No. 100) and Recommendation (No. 90), 1951*, ILC, 72nd Session, 1986, Report III (Part 4B); *General Survey of the Reports on the Migration for Employment Convention (Revised) (No. 97), and Recommendation (Revised) (No. 86), 1949, and the Migrant Workers (Supplementary Provisions) Convention (No. 143), and Recommendation (No. 151), ILC, 87th Session, 1999*, Report III (Part 1B).

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

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

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

### **Principles and standards embodied in Convention No. 95 and Recommendation No. 85**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<sup>18</sup> See GB.283/LILS/WP/PRS/1/2.

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

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

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

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

### **Status of ratification**

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

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

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

<sup>22</sup> See GB.283/LILS/WP/PRS/1/2, para. 17.

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

### Information available

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

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

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

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

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

### Structure of the survey

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

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



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

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