



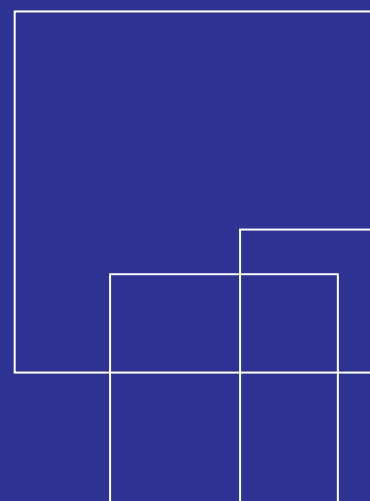
International
Labour
Office

Geneva



Minimum wage systems

INTERNATIONAL LABOUR CONFERENCE
103rd SESSION, 2014



International Labour Conference, 103rd Session, 2014

General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135)

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

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

Report III (Part 1B)

International Labour Office Geneva

Minimum wage systems

INTERNATIONAL LABOUR OFFICE GENEVA

ISBN 978-92-2-127744-6 (print)
ISBN 978-92-2-127745-3 (Web pdf)
ISSN 0074-6681

First edition 2014

© *Front cover illustration: protection-of-money: Sergey Ilin*

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. Catalogues or lists of new publications are available free of charge from the above address, or by email: pubvente@ilo.org.

Visit our website: www.ilo.org/publns.

Summary

Introduction

Chapter I. Definitions and objectives of the minimum wage standards

Chapter II. The scope of minimum wage systems

Chapter III. Minimum wage fixing machinery

Chapter IV. Variations in coverage of minimum wages

Chapter V. Consultation and participation of the social partners and other actors

Chapter VI. Criteria for fixing minimum wages and adjustment procedures

Chapter VII. Minimum wage enforcement measures

Chapter VIII. Minimum wages, economic crisis and austerity measures

Chapter IX. Final observations

Appendices

Contents

	<i>Page</i>
Summary.....	v
Introduction	1
Section 1. Context and scope of the General Survey	1
Section 2. Historical background of ILO standard-setting on minimum wage fixing	2
Section 3. Other relevant ILO standards	7
Section 4. Recent developments.....	9
Section 5. References to minimum wages in other international instruments	12
Section 6. Outcome of the Working Party on Policy regarding the Revision of Standards.....	16
Section 7. Ratification status	17
Section 8. Available information	17
Section 9. Outline of the General Survey	17
Chapter I	
Definitions and objectives of the minimum wage standards	19
Section 1. Definitions	19
1. The concept of the minimum wage	19
2. The components of the minimum wage	20
3. Minimum wage, living wage and fair wage.....	27
4. System and methods for determining minimum wages.....	30
Section 2. Objectives of Convention No. 131 and Recommendation No. 135	30
Conclusion	33

Chapter II	
The scope of minimum wage systems.....	35
Section 1. Scope of application of Convention No. 131	35
Section 2. Groups of wage earners not covered by national minimum wage systems	37
1. Exclusions mentioned in first reports on the application of the Convention	37
2. Exclusions currently in force	39
Agricultural workers	39
The public sector	39
Young workers and apprentices.....	40
Workers employed in family businesses	41
Wage earners in small enterprises.....	42
Domestic workers	42
Other categories of workers excluded.....	44
Conclusion	46
Chapter III	
Minimum wage fixing machinery.....	49
Section 1. Minimum wage fixed by the public authorities without consultation with the social partners	50
Section 2. Minimum wages fixed by the public authorities after consultation with the social partners	51
Section 3. Minimum wages fixed on a tripartite basis	59
Section 4. Minimum wages fixed by collective bargaining	62
Conclusion	66
Chapter IV	
Variations in coverage of minimum wages.....	69
Section 1. Minimum wage of general application.....	70
Section 2. Minimum wages by geographical area	72
Section 3. Minimum wages by sector	75
Section 4. Minimum wages by occupational category	78
Section 5. Minimum wages differentiated by other criteria.....	82
1. Differentiation on grounds of sex	83
2. Different minimum wages for young workers	84
3. Different minimum wages for apprentices and trainee workers.....	90
4. Different minimum wages for migrant workers.....	94
5. Different minimum wages for workers with disabilities	97
Conclusion	99

Chapter V**Consultation and participation of the social partners and other actors..... 101**

Section 1. Consultation and participation of employers' and workers' organizations.....	102
1. General remarks.....	102
2. Representativity of employers' and workers' organizations.....	104
3. Participation of organizations in the designation of their representatives.....	106
4. Participation of employers' and workers' organizations on an equal footing.....	109
5. Consultation and participation of the social partners in practice.....	110
Section 2. Participation of persons representing the general interests of the country	114
1. Qualifications of persons representing the general interests of the country	115
2. Consultation of employers' and workers' organizations on the appointment of persons representing the general interests of the country	116
Conclusion	118

Chapter VI**Criteria for fixing minimum wages and adjustment procedures..... 121**

Section 1. Criteria for the determination of minimum wage rates.....	122
1. Criteria related to the needs of workers and their families	122
2. Criteria related to economic factors	130
Section 2. Adjustment of minimum wages.....	134
Section 3. Surveys of the economic and social situation of the country and the collection of statistical or other data.....	138
Conclusion	141

Chapter VII**Minimum wage enforcement measures 143**

Section 1. Binding nature of minimum wages.....	143
Section 2. Dissemination of information on applicable minimum wage rates	148
Section 3. Authorities responsible for supervising the application of provisions pertaining to minimum wages.....	150
Section 4. Penalties for non-compliance with the applicable minimum wages.....	153
Section 5. Right of workers to recover wages due.....	158
Section 6. Role of employers' and workers' organizations.....	160

Section 7. Protection of workers against victimization	162
Section 8. Other measures to facilitate compliance with minimum wages	163
Conclusion	165
Chapter VIII	
Minimum wages, economic crisis and austerity measures.....	167
Conclusion	175
Chapter IX	
Final observations.....	177
Section 1. Difficulties encountered in applying Convention No. 131 and Recommendation No. 135 and requests for technical assistance.....	177
1. Main obstacles to implementation	177
2. Requests for technical assistance	178
Section 2. Prospects for the ratification of Convention No. 131	182
Section 3. Need for ILO standards-related action.....	188
Section 4. General conclusions.....	189
 Appendices	
I. Text of the relevant instruments.....	197
Convention No. 131	197
Convention concerning minimum wage fixing, with special reference to developing countries	197
II. List of ratifications of Convention No. 131 and reports received in accordance with article 19 of the ILO Constitution	203
III. List of employers' and workers' organizations having submitted observations concerning the instruments under examination.....	209
IV. Relevant legislation and other provisions	213
V. Reduced minimum wages for young workers.....	241
 Global map of ratifications	

Introduction

Section 1. Context and scope of the General 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 decided at its 313th Session (March 2012) that the General Survey to be submitted to the 2014 session of the International Labour Conference would cover the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135).¹ At its 315th Session, the Governing Body adopted the report form to be used by member States for the reports under article 19 of the ILO Constitution for the preparation of this General Survey.²

2. Based on the Governing Body's decision approving the report form for the preparation of the General Survey on minimum wage fixing, the governments of member States that have not ratified Convention No. 131 were invited to submit a report on national law and practice in regard to the matters dealt with in the Convention. Furthermore, pursuant to 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 Recommendation No. 135. The reports received, in addition to those submitted in accordance with articles 22 and 35 of the Constitution by States that have ratified Convention No. 131, have enabled the Committee of Experts on the Application of Conventions and Recommendations to prepare this General Survey on the effect given in law and practice to the instruments under consideration. This is the third time that a General Survey of the Committee of Experts has covered the minimum

* *Editorial note:* In this General Survey, the names of the States parties to Convention No. 131 appear in italics. For each of the points considered in the General Survey, references are made to legislation and practice in certain ILO member States. Those references are used by way of example as it would be impractical to refer to all member States on each of the themes covered by the survey. In the footnotes, the figure in parenthesis refers to the list of legal instruments by country included in Appendix IV. By analogy with the position adopted in 2011 by the International Labour Conference in the resolution concerning gender equality and the use of language in legal texts of the ILO, the Committee decided that in this survey "the use of one gender includes in its meaning a reference to the other gender unless the context otherwise requires". When the Committee refers to comments it has made on the application of Convention No. 131, the year given is the year in which the comment was sent to the Government (in the case of direct requests) or published in its report (in the case of observations).

¹ GB.313/LILS/6, para. 12, as amended. Contrary to the previous General Survey on minimum wage-fixing published in 1992, this survey does not address in detail instruments adopted prior to Convention No. 131, in particular Conventions Nos 26 and 99. At its 313th Session (March 2012), the Governing Body also decided that the first recurrent discussion on social protection (labour protection) would take place during the 2015 session of the Conference, see GB.313/INS/2, para. 19. This is the first time that the Governing Body has set a one-year gap between the Conference's consideration of the General Survey and the recurrent discussion on the topic. This decision was based on the conclusions of the Steering Group on the Follow-up to the Declaration on Social Justice for a Fair Globalization, which was of the view that this gap would facilitate consideration of the General Survey and improve the integration of the standards-related aspects into the recurrent discussion, see GB.309/10, para. 8.

² GB.315/INS/6/4, para. 4.

wage fixing instruments, which demonstrates the importance that the ILO has always accorded to this subject.³

Section 2. Historical background of ILO standard-setting on minimum wage fixing

3. Although at the time when the International Labour Organization was established, minimum wages had only been set in a few countries, including *Australia, France, New Zealand, Norway and the United Kingdom*, and only covered certain categories of workers,⁴ Article 427 of the Treaty of Versailles referred to “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” among the general principles guiding the policy of the future ILO. At the First Session of the Conference in 1919, the delegation of Paraguay, referring to Article 427, submitted a motion proposing that, at its next session, the Conference consider the possibility of setting minimum wages for different industries. In so doing, the delegation recalled that the same Article established the principle that, “labour should not be regarded merely as a commodity or article of commerce” and, as a result human labour should not be viewed as a commodity subject to the laws of supply and demand, and in times of unemployment should not be subjected to inadequate wages brought about by abundance of labour.⁵ Initially, the Governing Body entrusted the Office to make an inquiry into the systems in force in various countries concerning the regulation of wages by legislation.⁶ The results of this work were the subject of several articles published in the *International Labour Review* (ILR). Considering, in light of the research carried out by the Office, that the issue of minimum wage fixing could be considered by the Conference, the Governing Body placed it on the agenda of the 1927 session of the International Labour Conference.⁷ For the first time in the history of the ILO, this was the subject of a double discussion procedure, which resulted in the adoption of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26),⁸ and Recommendation, 1928 (No. 30).

4. Under Article 1 of Convention No. 26, States parties undertake “to create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades⁹ or parts of trades (and in particular in home-working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low”. As previously emphasized by

³ The two previous General Surveys were submitted to the 1958 and 1992 sessions of the Conference. See ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), International Labour Conference, 42nd Session, Geneva, 1958 (articles 19, 22 and 35 of the Constitution) (hereinafter the “General Survey of 1958”), which was prepared before the Conference adopted Convention No. 131; and ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations: Minimum wages*, Report III (Part 4B), International Labour Conference, 79th Session, Geneva, 1992 (articles 19, 22 and 35 of the Constitution) (hereinafter the “General Survey of 1992”).

⁴ A. Marinakis: *The role of the ILO in the development of minimum wages* (Geneva, ILO, 2008), p. 3.

⁵ League of Nations: International Labour Conference, First Annual Meeting, Washington, DC, Oct.–Nov. 1919, p. 271.

⁶ ILO: *Minutes of the Eighth Session of the Governing Body of the International Labour Office*, Stockholm, July 1921, p. 67.

⁷ ILO: *Minutes of the Thirtieth Session of the Governing Body of the International Labour Office*, Geneva, 1926, pp. 17 and 37.

⁸ Convention No. 26 entered into force on 14 June 1930 and has currently been ratified by 103 States.

⁹ For the purposes of Convention No. 26, the term “trades” includes manufacture and commerce (Article 1(2)).

the Committee,¹⁰ the provisions of Convention No. 26 should only be applied to trades fulfilling two conditions simultaneously: the absence of arrangements for the effective regulation of wages and the existence of exceptionally low wages. Article 2 of the Convention leaves States the freedom to decide, after consultation with workers' and employers' organizations, the trades or parts of trades in which the minimum wage fixing machinery shall be applied.¹¹ Finally, in accordance with Article 3 of the Convention, once fixed, minimum wage rates shall not be subject to abatement by individual agreement nor, except with general or particular authorization of the competent authority, by collective agreement.

5. Recommendation No. 30, which supplements Convention No. 26, provides in Part III that, for the purpose of determining the minimum rates of wages to be fixed, the wage-fixing body should in any case take account of the necessity of enabling the workers concerned to maintain a "suitable standard of living", with due regard "to the rates of wages being paid for similar work in trades where the workers are adequately organised and have concluded effective collective agreements, or, if no such standard of reference is available in the circumstances, to the general level of wages prevailing in the country or in the particular locality". Provision should also be made for the review of the minimum rates of wages fixed by the wage-fixing bodies when this is desired by workers or employers who are members of such bodies. In Part II, the Recommendation calls for minimum wage-fixing to include investigation, consultation with the employers and workers in the trade or part of trade concerned, the direct and equal participation of employers and workers in the deliberations and decisions of the wage-fixing body, the participation of independent persons, as well as the participation of women in these bodies wherever a considerable proportion of women are employed in the trade or part of trade concerned. Finally, according to Part IV of the Recommendation, measures to ensure that wages are not paid at less than the minimum rates which have been fixed should be taken to protect effectively the wages of the workers concerned and safeguard the employers affected against the possibility of unfair competition.

6. Adopted after the world had witnessed its worst economic crisis and in the final months of the Second World War, the 1944 Declaration concerning the aims and purposes of the International Labour Organisation (known as the "Declaration of Philadelphia", which forms an integral part of the ILO Constitution), reaffirmed that "poverty anywhere constitutes a danger to prosperity everywhere" (Part I(c)). Based on this principle, the Declaration recognizes the solemn obligation of the ILO to further among the nations of the world, programmes which will achieve, inter alia, "policies in regard to wages and earnings ... 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" (Part III(d)). In its resolution concerning the maintenance of full employment during the period of industrial rehabilitation and reconversion, adopted in 1945, the International Labour Conference recommended "the establishment of appropriate minimum wage standards, adequate for satisfying reasonable human needs" in order to "assist the progressive raising of the standard of living of all workers".¹² The same year the Conference adopted a resolution concerning the protection of children and young

¹⁰ ILO: *General Survey of 1992*, para. 69.

¹¹ The preparatory work also shows that the majority of the Conference Committee was of the opinion that member States should not be obliged to apply the minimum wage fixing machinery and that in this matter complete freedom should be left to the governments, based on the view that if the machinery existed, its application would necessarily follow in those cases in which the need for it was felt. ILC: *International Labour Conference*, 11th Session, Geneva, 1928, Vol. I, p. 631.

¹² The texts of all Conference resolutions mentioned in this General Survey can be found at the following address: <http://www.ilo.org/public/libdoc/ilo/P/09734/>.

workers, which provided that all necessary measures should be taken “to assure the material well-being of children and young persons by ... the provision of a living wage for all employed persons sufficient to maintain the family at an adequate standard of living” (paragraph 5(b)) and that provisions “with reference to wages paid to young workers should have the objective of assuring that they are paid wages commensurate with the work performed, observing wherever possible the principle of equal pay for comparable jobs” (paragraph 30).

7. In the second half of the twentieth century, the Conference made an effort to extend minimum wage protection to hitherto excluded categories of workers. The Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76), for the first time, set a specific amount for the minimum wage for seafarers (£16 or US\$64 or the equivalent thereof in other currency).¹³ Furthermore, the adoption of the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), was intended to offer specific protection to workers in these territories, particularly in respect of the fixing of minimum wages by collective agreements freely negotiated, or in consultation with representatives of the employers and workers, and compliance with the minimum wage rates fixed. The need for minimum standards on working conditions, and particularly wages, for agricultural workers was also increasingly felt. It has been established that, in the 1930s, the wages paid in agriculture were considerably lower than those in industry, although this gap was redressed slightly during the Second World War and in the immediate post-war period.¹⁴ At the national level, the regulation of wages in agriculture developed between the two world wars, and the examination of this national legislation facilitated the preparatory work for the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99), and the Minimum Wage-Fixing Machinery (Agriculture) Recommendation, 1951 (No. 89).¹⁵

8. Unlike Convention No. 26, Convention No. 99 is of general application in the agriculture sector, whether there is effective wage fixing machinery in place or not. However, Article 1 of the Convention provides that each Member which ratifies the Convention shall be free to determine, after consultation with the most representative organizations of employers and workers concerned, to which undertakings, occupations and categories of persons it shall be applied. Certain specific categories of persons may also be excluded from the application of the Convention, such as members of the farmers’ families employed by them. Unlike Convention No. 26, Convention No. 99 does not authorize exemptions from compulsory minimum wages, except in individual cases to prevent curtailment of the opportunities of employment of workers with physical or mental disabilities (Article 3(4) and (5)). In the same way as Recommendation No. 30,

¹³ No ratifications were however registered for this Convention, which was later revised by the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93), and then by the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), neither of which entered into force. These three Conventions were all revised by the Maritime Labour Convention, 2006 (MLC, 2006), pursuant to which, “Without prejudice to the principle of free collective bargaining, each Member should, after consulting representative shipowners’ and seafarers’ organizations, establish procedures for determining minimum wages for seafarers” (Guideline B2.2.3(1)). The MLC, 2006, also provides that basic pay or wages for a calendar month of service for an able seafarer should be no less than the amount periodically set by the Joint Maritime Commission (Guideline B2.2.4(1)). It should be noted that the MLC, 2006, is not applicable to the fishing sector, for which Paragraph 15 of the Work in Fishing Recommendation, 2007 (No. 199), provides only that, “for vessels of 24 metres in length and over, all fishers should be entitled to minimum payment in accordance with national laws, regulations or collective agreements”.

¹⁴ ILO: *Minimum wage fixing machinery in agriculture*, Report VII(1), International Labour Conference, 33rd Session, Geneva, 1950, pp. 8–11 and 50–54.

¹⁵ Furthermore, Article 24 of the Plantations Convention, 1958 (No. 110), provides that the fixing of minimum wages by collective agreement shall be encouraged or, in the absence of collective agreements, by other arrangements.

Recommendation No. 89 considers it desirable that the wage-fixing body should in any case take account of the necessity of enabling the workers concerned to maintain a “suitable standard of living” (Part I, Paragraph 1) and that the following factors should be taken into consideration when fixing minimum wages: “the cost of living, fair and reasonable value of services rendered, wages paid for similar or comparable work under collective bargaining agreements in agriculture, and the general level of wages for work of a comparable skill in other industries in the area where the workers are sufficiently organised” (Part I, Paragraph 2).

9. In the General Survey of 1958, the Committee indicated that the concept of minimum wages had undergone significant evolution since the adoption of Convention No. 26 in 1928.¹⁶ While minimum wage fixing machinery seemed to be regarded, especially at the beginning, primarily as a marginal mechanism, the concept of the national minimum wage – adopted in the place of, or in addition to, the fixing of minimum rates for particular sectors of activity – had developed progressively. At the international level, the need for general, rather than sectoral standards was also being increasingly felt. Since 1962, the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), has called on States parties to encourage the fixing of minimum wages by collective agreements freely negotiated between trade unions and employers or employers’ organizations and provides that, where no adequate arrangements exist for the fixing of minimum wages by collective agreement, the necessary arrangements shall be made whereby minimum rates of wages can be fixed in consultation with representatives of the employers and workers, including representatives of their respective organizations, where such exist (Article 10). Two years later, in a resolution concerning minimum living standards and their adjustment to the level of economic growth, the Conference considered that “in order to bring about balanced economic expansion and social progress, an equitable distribution of incomes ensuring for the lowest-paid categories of workers a minimum standard of living, in conformity with and periodically adjusted to the pace of the country’s economic expansion, is needed” (fourth preambular paragraph). Emphasizing “that adequate minimum standards of living should be ensured through the establishment of a dynamic minimum wage level and a dynamic level of social security measures adjusted periodically to take full account of economic growth and to have due regard to increases in the cost of living” (paragraph 2), the Conference invited the Governing Body of the ILO to request the Director-General to work out proposals for a revision of Convention No. 26 and Recommendation No. 30, taking into account the principles enunciated in the resolution (paragraph 3(2)).

10. At its 168th Session (February–March 1967), the Governing Body, discussing the follow-up to the resolution, decided to convene a Meeting of Experts on Minimum Wage Fixing and Related Problems, with Special Reference to Developing Countries,¹⁷ which was held in Geneva from 25 September to 6 October 1967. In one of the two reports prepared for the meeting, the Office emphasized that the existing Conventions embodied only the obligation to create or maintain suitable minimum wage fixing machinery, without requiring the fixing of actual rates. That obligation alone was unable to guarantee that the workers would effectively have a right to a minimum wage.¹⁸ The

¹⁶ ILO: *General Survey of 1958*, para. 89.

¹⁷ ILO: *Minutes of the 168th Session of the Governing Body*, Geneva, 27 Feb.–3 Mar. 1967, p. 58 and Appendix XV, paras 2–9.

¹⁸ ILO: Meeting of Experts on Minimum Wage Fixing and Related Problems, with Special Reference to Developing Countries, Report II, *Ways in which the ILO minimum wage fixing machinery Conventions and Recommendations might be revised*, MEMW/1967/D.2, para. 14. The Office also stated that, since minimum wage fixing was considered to be one of several means of combating poverty, it was normal that efforts should be made to devise minimum wage fixing machinery fitting in with other national economic and social objectives

experts concluded that, in light of the desirability of drawing up new instruments, “particularly if a policy of fixing minimum wages is regarded both as an effective instrument of social protection and as an element of a strategy of economic development”, such instruments “should take into consideration aspects not envisaged by the standards in force”.¹⁹ To this end, they envisaged the improvement of existing standards in three respects: the obligation to establish a system of minimum wages; the extension of the scope of the instruments so that minimum wages were instruments for economic development; and the nature of the criteria applied in the determination of minimum wages which should, in the case of developing countries, be related to the needs of economic development and to the characteristics of such countries.²⁰ The majority of the experts therefore voted in favour of the adoption of a new Convention, supplemented by a Recommendation, which would not affect Conventions Nos 26 and 99 or Recommendations Nos 30 and 89.²¹

11. Based on the work of the Meeting of Experts, the Governing Body decided to include on the agenda of the 53rd Session (1969) of the International Labour Conference an item on “minimum wage fixing machinery and related problems, with special reference to developing countries”.²² The Conference considered the item in a double discussion procedure, which led to the adoption the following year of Convention No. 131 and Recommendation No. 135. It should be noted that Article 6 of Convention No. 131 specifically provides that the Convention shall not be regarded as revising any existing Convention. Conventions Nos 26 and 99, therefore, remain open for ratification by States that are not yet in a position to offer the broader protection provided for in Convention No. 131. The development of these three key minimum wage fixing Conventions is summarized in the table below.

(*ibid.*, para. 15). Finally, it observed that neither Convention No. 26, nor Convention No. 99, unlike the Recommendations that supplement them, contain any provisions relating to the criteria for wage fixing or to the revision of the minimum wage (*ibid.*, para. 6).

¹⁹ ILO: *Meeting of Experts on Minimum Wage Fixing and Related Problems, with Special Reference to Developing Countries: Report*, MEMW/1967/D.8, para. 98.

²⁰ *ibid.*, para. 99.

²¹ *ibid.*, paras 126–127.

²² ILO: *Minutes of the 170th Session of the Governing Body*, Geneva, 14–17 Nov. 1967, pp. 17–18 and Appendix II.

Comparative overview of Conventions Nos 26, 99 and 131

	Convention No. 26	Convention No. 99	Convention No. 131
Year of adoption	1928	1951	1970
Entry into force	14 June 1930	23 August 1953	29 April 1972
Number of ratifications	103	52	52
Status ¹	Status quo (no longer fully up to date but relevant in certain respects)	Status quo (no longer fully up to date but relevant in certain respects)	Up to date
Principal obligation	Create or maintain machinery whereby minimum rates of wages can be fixed	Create or maintain adequate machinery whereby minimum rates of wages can be fixed	Establish a system of minimum wages
Scope of application	Trades or parts of trades in which no arrangements exist for the effective regulation of wages and wages are exceptionally low	Workers employed in agricultural undertakings and related occupations	All groups of wage earners whose terms of employment are such that coverage would be appropriate
Role of social partners	Consultation or participation in equal numbers and on equal terms	Consultation or participation on a basis of complete equality	Full consultation. Wherever appropriate, direct participation on a basis of equality
Criteria for fixing minimum wages	No	No	Yes
Periodical adjustment	No	No	Yes
Binding force	Yes – Possible derogation by collective agreement subject to the general or particular authorization of the competent authority	Yes – The competent authority may permit exceptions in individual cases to prevent curtailment of the opportunities of employment of workers with disabilities	Yes
Enforcement measures	Yes	Yes	Yes

¹ Based on Governing Body decision following the recommendations of the Working Party on Policy regarding the Revision of Standards; see GB.283/LILS/WP/PRS/1/2.

Section 3. Other relevant ILO standards

12. Whatever the minimum wage fixing machinery that is in place in the various States, it must of course comply with the rules set out in the Constitution of the ILO and with the fundamental principles and rights at work as well as, for the States that have ratified them, the provisions of the eight fundamental Conventions. Respect for freedom of association, without which there cannot be genuine and effective consultation between employers' and workers' organizations, is therefore essential for the implementation of Convention No. 131 and Recommendation No. 135. Convention No. 131 requires the freedom of collective bargaining to be fully respected.²³ Furthermore, the Equal

²³ Subject to the obligation for minimum wages to have the force of law and not be subject to abatement; see Article 2 of the Convention.

Remuneration Recommendation, 1951 (No. 90), which supplements the Equal Remuneration Convention, 1951 (No. 100), calls for appropriate action to be taken, after consultation with the employers' and workers' organizations concerned, to ensure, as rapidly as practicable, the application of the principle of equal remuneration for men and women workers for work of equal value, particularly as regards the establishment of minimum or other wage rates in industries and services where such rates are determined under public authority.²⁴ More broadly, pursuant to Articles 1 and 2 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, or on any other basis determined by the member State. The Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), develops the principles on which this national policy should be based, including the right to enjoy, without discrimination, equality of opportunity and treatment in respect of remuneration for work of equal value (Paragraph 2(b)(v)).

13. The ILO's governance standards are also relevant for the implementation of instruments on minimum wage fixing. The Preamble to the Employment Policy Convention, 1964 (No. 122), refers both to the prevention of unemployment and the provision of an adequate living wage, thereby emphasizing the qualitative dimension of employment. This approach, which aims to enable men and women to "work out of poverty", was also the subject of a report submitted to the Conference by the Director-General of the ILO.²⁵ Convention No. 122 also emphasizes the need for member States to decide on, and keep under review, within the framework of a coordinated economic and social policy, the measures to be adopted for attaining full, productive and freely chosen employment (Article 2(a)). The Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), commits ratifying States to hold consultations on each of the measures to be taken at the national level in regard to international labour standards. Convention No. 144 provides that the nature and form of the procedures for consultations have to be determined in accordance with national practice, after consultation with the representative organizations of employers and workers, and that such organizations have to choose their representatives freely and be represented on an equal footing on any competent body. Finally, the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), require States parties to maintain a labour inspection system responsible for securing the enforcement of the legal provisions relating to conditions of work, including wages,²⁶ and are clearly important for ensuring compliance with the applicable minimum wages.

14. Convention No. 131 is also closely linked with other ILO instruments on conditions of work. As already mentioned, the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), calls for the fixing of minimum wages by freely negotiated collective agreements, or by other suitable arrangements based on consultations with employers' and workers' representatives, and also requires that workers be kept

²⁴ Recommendation No. 90, Paragraph 2(a). When adopting the Minimum Wage-Fixing Machinery Recommendation, 1928 (No. 30), the Conference had already called the attention of governments to the principle that men and women should receive equal remuneration for work of equal value (Recommendation No. 30, Part B).

²⁵ ILO: *Working out of poverty*, Report of the Director-General, Report 1(A), International Labour Conference, 91st Session, Geneva, 2003.

²⁶ Convention No. 81, Articles 1 and 3(1)(a); and Convention No. 129, Articles 1 and 6(1)(a).

informed of the minimum wage rates applicable to them and be given the means to recover any amounts by which they have been underpaid. In fact, fixing minimum wages would run the risk of not meeting its objective of satisfying the needs of workers and their families if it were not accompanied by measures intended to ensure that the wages due are in practice paid to workers in full and at regular intervals. The Protection of Wages Convention, 1949 (No. 95), and Recommendation, 1949 (No. 85), are of considerable importance in this respect.²⁷ Several instruments that apply to specific categories of workers also contain provisions relevant to the present survey. Some, such as the Domestic Workers Convention, 2011 (No. 189), and the Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172), aim to ensure that the workers concerned are not excluded from the scope of minimum wage fixing provisions at the national level.²⁸ Other instruments guarantee that specific categories of workers are not subject to discrimination in respect of their wages: the Migration for Employment Convention (Revised), 1949 (No. 97); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Part-Time Work Convention, 1994 (No. 175); and the Home Work Convention, 1996 (No. 177).²⁹ Yet, other instruments, such as the Home Work Recommendation, 1996 (No. 184), explicitly provide for the fixing of minimum wage rates for a specific category of workers.³⁰

15. This overview would not be complete without mentioning the Labour Statistics Convention, 1985 (No. 160). The regular collection, compilation and publication of statistics on the economically active population, employment, unemployment, average earnings and hours of work, wage rates, wage structure and distribution, as provided for in the Convention, contribute significantly to enlightened decision-making with regard to the fixing and adjustment of minimum wage rates.

Section 4. Recent developments

16. After two decades marked by a certain disinterest in minimum wage policy as a tool for social protection and poverty reduction, the ILO has noticed a renewed interest in this issue since the early 2000s. This renewed interest could be linked to the increase in the number of vulnerable workers that accompanied economic growth during the first part of the decade, the widening income inequality in many countries and concerns about the erosion of the purchasing power of wages due to inflationary tendencies until mid-

²⁷ These instruments cover a vast set of issues, including methods of paying wages and, in particular, the regulation of the partial payment of wages in kind; the freedom of workers to dispose of their wages; the regulation of deductions from wages, and the attachment or assignment of wages; the periodicity, time and place of wage payment; and the employer's obligation to provide information on wages. This protection has been extended by the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173), and Recommendation, 1992 (No. 180). See ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations: Protection of wages: Standards and safeguards relating to the payment of labour remuneration*, Report III (1B), International Labour Conference, 91st Session, 2003 (articles 19, 22 and 35 of the Constitution).

²⁸ Convention No. 189, Article 11; and Convention No. 172, Article 3(2).

²⁹ Convention No. 97, Article 6(1)(a)(i); Convention No. 143, Article 10; Convention No. 175, Article 5; and Convention No. 177, Article 4(2)(d). Furthermore, under Article 2(1) of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), contracts to which the Convention applies shall include clauses ensuring to the workers concerned wages and other conditions of labour that are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on by collective agreement, arbitration award or national laws or regulations.

³⁰ Recommendation No. 184, Paragraph 13.

2008. Minimum wage fixing has thus come back to the fore as a means of combating poverty and reducing income inequalities.³¹

17. This renewal of interest in minimum wages has also been demonstrated by an increase in the number of ratifications of Convention No. 131, 11 new States having become parties to the Convention since January 2000. It is also reflected in the resolutions and conclusions adopted by the International Labour Conference on broader topics, such as equal remuneration for men and women,³² youth employment³³ and the promotion of rural employment for poverty reduction.³⁴ In the 2007 resolution concerning the promotion of sustainable enterprises, the Conference also emphasized that workers need to be able to participate in the success of enterprises and to gain a fair share in the benefits of economic activities and increased productivity, and that effective exercise of the right to organize and bargain collectively is also an effective means to ensure fair distribution of productivity gains and adequate remuneration of workers.³⁵ In 2010, following the recurrent discussion on employment, the Conference concluded that governments of member States should design and promote policies in regard to wages and earnings, hours and other conditions of work that 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, and consider options such as minimum wages that can reduce poverty and inequity, increase demand and contribute to economic stability. Convention No. 131 can provide guidance in this respect.³⁶

18. The Global Jobs Pact, adopted by the Conference in 2009, also makes several references to minimum wages as one of the means of responding to the global economic crisis, and Convention No. 131 is the only ILO instrument to which it refers specifically in that regard.³⁷ The issue of minimum wage fixing has also been addressed in various ILO Regional Meetings. In 2006, the 16th American Regional Meeting in Brasilia launched the Decent Work Decade in the Americas, 2006–15, emphasizing the particular importance of several policies, including minimum wages.³⁸ At the 15th Asia and the Pacific Regional Meeting in Kyoto in 2011, member States in the region set priorities for the period until 2015, including promoting collective bargaining and the development of minimum wage systems based on ILO standards.³⁹ The conclusions of the 11th African

³¹ GB.304/ESP/3, paras 5–6, and GB.306/ESP/2, paras 13–26. Minimum wage fixing has also been an element of countries' responses to the recent economic crisis. The experience of *Brazil* is described in paragraph 329 and the measures adopted in a certain number of countries are summarized in paragraphs 333–343 below.

³² Resolution of 2009 concerning gender equality at the heart of decent work, conclusions, para. 18; resolution of 2004 concerning the promotion of gender equality, pay equity and maternity protection, para. 5(d)(i); resolution of 2001 concerning social security, conclusions, para. 10.

³³ Resolution of 2012 concerning the youth employment crisis: A call for action, paras 29, 47 and 48(h) of the conclusions and appendix, "International labour standards relevant to work and young persons"; resolution of 2005 concerning youth employment, conclusions, para. 28, and appendix, "International labour standards relevant to work and young persons".

³⁴ Resolution of 2008 concerning promotion of rural employment for poverty reduction, para. 61 of the conclusions and Appendix II, "Instruments of the International Labour Organization relevant to the promotion of rural employment for poverty reduction".

³⁵ Paras 11(15) and 13(4) of the conclusions.

³⁶ Resolution of 2010 concerning the recurrent discussion on employment, para. 31(i)–(ii) of the conclusions.

³⁷ Resolution on recovering from the crisis: A global jobs pact, International Labour Conference, 98th Session, paras 12(3), 14(2), 23 and 26.

³⁸ GB.297/5, Appendix II, paras 7–8. In 2010, during the 17th American Regional Meeting in Santiago, Chile, the tripartite participants emphasized that the recovery of the real minimum wage had largely been achieved in the region, though at levels that were still insufficient. See GB.310/4, Appendix III, para. 6.

³⁹ GB.313/INS/5, Appendix III, paras 30 and 34.

Regional Meeting, held in 2007 in Addis Ababa, *The Decent Work Agenda in Africa: 2007–15*, emphasized that the goal of generating decent work should feature prominently in national macroeconomic policies, and that these policy vehicles should enable growth in employment and an improvement in the quality of employment, not least through the setting of appropriate minimum wage levels.⁴⁰ The participants at the Eighth European Regional Meeting held in Lisbon in 2009, stressed the importance of social dialogue for shaping social and economic policies, including wage policies. Many highlighted the diversity of minimum wage fixing mechanisms across countries. In general, they stressed the need, especially in the present economic downturn, to protect decent working conditions of those worst hit by the crisis, many of whom were women, as a means to avoid further fragmentation of labour markets and preserve social cohesion.⁴¹ Lastly, the Oslo Declaration, adopted at the Ninth European Regional Meeting in April 2013, emphasized that the measures contained in the 2009 Global Jobs Pact are relevant and should be effectively implemented.⁴²

19. The Governing Body also regularly discusses the issue of minimum wage-fixing. In November 2004, the Office submitted a paper to the Committee on Employment and Social Policy of the Governing Body – *The minimum wage: Catalyst for social dialogue or economic policy instrument?*⁴³ – so that the Committee’s views could be taken into account in technical cooperation programmes, in the promotion of Convention No. 131, in all discussions with other international agencies on matters relating to poverty and in all future research work. In March 2007, following a new discussion on wages around the world, the Governing Body recognized wages as a major component of decent work. Aware of the knowledge gaps that existed in relation to wages and income issues, the Governing Body invited the Office to implement a programme of work to address a number of issues, including wage-setting mechanisms and wage bargaining.⁴⁴ In response to this request from the Governing Body, the ILO began to publish a biennial *Global Wage Report*,⁴⁵ the first edition of which, published at the end of 2008, was specifically devoted to minimum wages.⁴⁶ The 2010–11 and 2012–13 *Global Wage Reports* also include information on developments in minimum wage policy.⁴⁷

20. At the national level, the revival of interest in minimum wages has generated a pressing need for information on how best to set and operate minimum wage policies. This has translated into an increase in constituents’ requests for technical assistance from the Office. One way to answer the large demand for minimum wage-related information has been for the ILO and the International Training Centre (ITC) to hold regular training workshops on effective wage policies in Turin and in the regions, including Johannesburg in 2011, Amman in 2012 and the South Pacific in 2013. The Office has

⁴⁰ GB.300/6, Appendix III, para. 7.

⁴¹ GB.304/14/4(Rev.), Appendix III, paras 23–24.

⁴² *The Oslo Declaration: Restoring confidence in jobs and growth*, Ninth European Regional Meeting, Oslo, Norway, 8–11 Apr. 2013, ERM.9/D.7.

⁴³ GB.291/ESP/5(&Corr.), para. 50.

⁴⁴ GB.298/ESP/2 and GB.298/11(Rev.), para. 79.

⁴⁵ In order to have the statistics necessary for drafting this report, the Office established a database on wages covering more than 100 member States, which can be accessed at the following address: <http://www.ilo.org/travail/info/db/lang--en/index.htm>.

⁴⁶ ILO: *Global Wage Report 2008–09: Minimum wages and collective bargaining: Towards policy coherence* (Geneva, 2009).

⁴⁷ ILO: *Global Wage Report 2010–11: Wage policies in times of crisis* (Geneva, 2010); *Global Wage Report 2012–13: Wages and equitable growth* (Geneva, 2012).

also provided country-specific advice to member States in order to strengthen their institutional capacity to implement evidence-based wage policies.

21. In Asia, for instance, the ILO has worked together with China's Ministry of Human Resources and Social Security to improve coordination between different provinces with respect to minimum wage fixing and to improve the enforcement of minimum wages. This collaboration also focused on establishing a more favourable environment for collective bargaining, which contributed to the increased use of collective agreements at the sectoral level to set minimum wages. In Latin America and the Caribbean, the ILO supported *Costa Rica's* tripartite national wage board in its efforts to revise the criteria used for annual minimum wage adjustments, resulting in the conclusion of a new tripartite agreement in October 2011. In the Middle East and North Africa, the ILO participated in the revival of *Egypt's* tripartite National Council of Wages, the activities of which had been frozen since 1984. In sub-Saharan Africa, the ILO supported a process over the course of several years in Cabo Verde, culminating in the adoption by the tripartite Social Advisory Council of a national minimum wage for all employees for the first time in the country's history. The ILO has also supported Namibia's Wages Commission for Domestic Workers. In Europe, the ILO has collaborated with the European Commission to map information on national minimum wage fixing in various countries of the European Union (EU).⁴⁸ Finally, over the past two years, technical assistance has been provided to a number of countries, including *Albania*, Botswana, Georgia, Lesotho, Mongolia, Paraguay, Philippines, South Africa, *United Republic of Tanzania*, *the former Yugoslav Republic of Macedonia* and Viet Nam.

Section 5. References to minimum wages in other international instruments

22. Outside the ILO, several international instruments recognize the right to a decent wage. Article 23, paragraph 3, of the Universal Declaration of Human Rights provides that everyone who works has "the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection". Article 7 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone "to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind ...; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant". In its monitoring of the implementation of the Covenant, the Committee on Economic, Social and Cultural Rights has sometimes had to comment on the minimum wages in force in the States parties under examination. In some cases, it has considered that the minimum wage in force does not allow workers and their families to live in dignity.⁴⁹

⁴⁸ D. Vaughan-Whitehead (ed.): *The minimum wage revisited in the enlarged EU* (Geneva, 2010) (Cheltenham and Northampton, Edward Elgar Publishing). The study showed that in 2010, 20 of the 27 Member States of the EU had a statutory national minimum wage in place. This includes nine of the original 15 Member States and 11 of the newer Members.

⁴⁹ Over the course of the past decade, the Committee has adopted this conclusion in respect of the following States parties: Afghanistan (E/C.12/AFG/CO/2-4, para. 23); Algeria (E/C.12/DZA/CO/4, para. 10); Angola (E/C.12/AGO/CO/3, para. 21); *Plurinational State of Bolivia* (E/C.12/BOL/CO/2, paras 14 (b) and 27 (b)); Bulgaria (E/C.12/BGR/CO/R.4-5, para. 12); *Cameroon* (E/C.12/CMR/CO/2-3, para. 15); Canada (E/C.12/CAN/CO/4 – E/C.12/CAN/CO/5, paras 11(f), 18 and 47); *Chile* (E/C.12/1/Add.105, paras 17 and 38); Cyprus (E/C.12/CYP/CO/5, para. 17); Dominican Republic (E/C.12/DOM/CO/3, para. 16); *El Salvador*

23. Several regional instruments should also be mentioned. The American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States in 1948, is drafted in similar terms to the Universal Declaration of Human Rights. In Article XIV, the American Declaration provides that every person who works “has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family”.⁵⁰ Furthermore, in accordance with Article 7(a) of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (the “San Salvador Protocol”), adopted in 1988 and which entered into force in 1999, the States parties recognize that the right to work presupposes that everyone shall enjoy that right under just, equitable, and satisfactory conditions, which the States parties undertake to guarantee in their internal legislation, particularly with respect to remuneration “which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction”.

24. In the context of the Council of Europe, Article 4 of the European Social Charter (revised), 1996, recognizes the right of workers to fair remuneration.⁵¹ More specifically, States parties undertake to recognize the right of workers to remuneration sufficient to ensure for them and their families a decent standard of living (Article 4, paragraph 1). According to the European Committee of Social Rights, to be considered fair, wages must in any event be above the poverty line in a given country, that is 50 per cent of the national average wage. Furthermore, if the wage lies between 50 and 60 per cent of the national average wage, a State is asked to demonstrate that the wage is sufficient for a decent standard of living, for example, by providing detailed information on the cost of living.⁵² With regard to the EU, Article 5 of the Community Charter of the Fundamental Social Rights of Workers, adopted in 1989, provides that “all employment shall be fairly remunerated. To this effect, in accordance with arrangements applying in each country: workers shall be assured of an equitable wage, i.e. a wage sufficient to enable them to have a decent standard of living ...”. The Charter of Fundamental Rights of the

(E/C.12/SLV/CO/2, paras 12 and 30); Estonia (E/C.12/EST/CO/2, para. 16); Hungary (E/C.12/HUN/CO/3, paras 14 and 37); India (E/C.12/IND/CO/5, paras 22 and 62); Kenya (E/C.12/KEN/CO/1, para. 18); Latvia (E/C.12/LVA/CO/1, paras 19 and 44); Republic of Moldova (E/C.12/MDA/CO/2, para. 11); Nepal (E/C.12/NPL/CO/2, paras 11, 20 and 39); Nicaragua (E/C.12/NIC/CO/4, para. 16); Philippines (E/C.12/PHL/CO/4, para. 22); Russian Federation (E/C.12/RUS/CO/5, para. 18); Slovakia (E/C.12/SVK/CO/2, para. 15); Tajikistan (E/C.12/TJK/CO/1, paras 22 and 53); Turkey (E/C.12/TUR/CO/1, para. 17); Ukraine (E/C.12/UKR/CO/5, paras 15 and 38); Uruguay (E/C.12/URY/CO/3-4, para. 12); Uzbekistan (E/C.12/UZB/CO/1, paras 19 and 49) and Zambia (E/C.12/1/Add.106, paras 18 and 41). Furthermore, in the specific context of the global economic crisis, the Committee expressed its concern in the case of *Spain* that the minimum wage has been frozen since 2011 at a level that does not guarantee an acceptable standard of living (E/C.12/ESP/CO/5, para. 18).

⁵⁰ The Conference also adopted the Inter-American Charter of Social Guarantees, which enshrines the minimum rights that workers must enjoy in the American States, Article 8 providing that “every worker has the right to earn a minimum wage, fixed periodically with the participation of the state and of workers and employers, which shall be sufficient to cover his normal home need, material, moral and cultural, taking into account the characteristics of each type of work, the special conditions of each region and each job, the cost of living, the worker’s relative aptitude, and the wage systems prevalent in the enterprises. A minimum occupational wage shall also be set up for those activities in which this matter is not regulated by a collective contract or agreement”. However, the impact of this Charter has been limited in view of the low level of support that it enjoyed.

⁵¹ The same provision is found in Article 4 of the original text of the European Social Charter, adopted in 1961. The Convention for the Protection of Human Rights and Fundamental Freedoms does not guarantee economic and social rights as such, including the right to a minimum wage. See European Court of Human Rights decision in the case of *Salvetti v. Italy*, issued on 9 July 2002 (Application No. 42197/98).

⁵² Council of Europe: *Digest of the case law of the European Committee of Social Rights*, 1 Sep. 2008, p. 43, http://www.coe.int/t/dghl/monitoring/socialcharter/digest/DigestSept2008_en.pdf.

European Union (2000), which was intended to reiterate the provisions of the 1989 Charter, does not however address the issue of the right of workers to a decent or fair wage, and only provides in Article 31 that “every worker has the right to working conditions which respect his or her health, safety and dignity”.

25. For its part, the Organisation of African Unity, the predecessor of the African Union, adopted at the session of its Assembly of Heads of State and Government in 1981, the African Charter on Human and Peoples’ Rights (also known as the Banjul Charter), which entered into force in 1986. The Charter only contains a general provision under Article 15 that every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work. However, the African Commission on Human and People’s Rights, established under the Charter, adopted in 2010 “Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and People’s Rights”.⁵³ With respect to Article 15 of the Charter, the Principles and Guidelines indicate that “access to equitable and decent work, which respects the fundamental rights of the human person and the rights of workers in terms of ... remuneration can ... be critical for both survival and human development” (paragraph 57). More specifically, this instrument elaborates that the right to work includes the obligation of the State to ensure the right of everyone to equitable and satisfactory conditions of work, including, among others, fair remuneration (paragraph 59).

26. In Asia, the South Asian Association for Regional Cooperation (SAARC), with a view to developing a regional platform of action, adopted a SAARC Social Charter during its 12th summit in 2004. This Social Charter provides, under Article II, paragraph 2(viii), that the States parties agree to promote the equitable distribution of income and greater access to resources through equity and equality of opportunity for all. Under the provisions of Article X, States parties must formulate a national plan of action or modify the existing one to operationalize the provisions of the Social Charter. In the framework of the Association of Southeast Asian Nations (ASEAN), the member States adopted the ASEAN Human Rights Declaration on 18 November 2012. Paragraph 27(1) of this Declaration provides that every person has the right to enjoy just, decent and favourable conditions of work while paragraph 28 provides that every person has the right to an adequate standard of living for himself or herself and his or her family.

27. It is also interesting to mention the Arab Charter on Human Rights, which was adopted at the 16th Session of the Summit of the League of Arab States in 2004 and entered into force in 2008,⁵⁴ and which provides in Article 34 that every worker has, among others, the right to enjoy just and favourable conditions of work which ensure appropriate remuneration to meet his or her essential needs and those of his or her family. In addition, Article 8 of the Arab Labour Charter 1965, which approves joint studies to set standards on minimum wages and reduce, to the extent possible, the differences between them, thus making implicit reference to combating the unfair

⁵³ In addition to this instrument, the African Commission also adopted in 1989 guidelines for national periodic reports under the African Charter. The 1989 guidelines indicate that among the elements to be reported should be the principal methods used for fixing wages (minimum wage fixing machinery, collective bargaining, statutory regulations, etc.) in the various sectors, and numbers of workers involved, and information on the categories and numbers of workers for whom wages are not set by such methods.

⁵⁴ Prior to the 2004 Charter, the Council of the League adopted in 1994 an instrument, also called the Arab Charter on Human Rights. This 1994 instrument, however, never entered into force. The text of this Charter was subsequently revised to formulate the present Charter.

competition that is often associated with minimum wage policies. Moreover, Arab Convention No. 15 concerning the determination and protection of wages, adopted by the Arab Labour Conference in 1983, provides only for the possibility – and not the obligation – for States Members of the Arab Labour Organization to adopt a minimum wage system, which must be applied to all categories of workers.

28. Finally, some industrialized nations, aware of the potential impact of wage differentials on their own competitiveness, have sought to include social considerations in their discussions with trade partners.⁵⁵ In the United States, the Trade and Tariff Act 1984, which renewed the Generalized System of Preferences (GSP),⁵⁶ adopted an innovative approach by encouraging developing countries which enjoy the benefit of preferential trade treatment under the GSP “to afford workers internationally recognized worker rights”, which include acceptable working conditions with regard to minimum wages, working hours, and occupational health and safety.⁵⁷

29. Subsequently, after unsuccessful attempts to introduce a social clause into the General Agreement on Tariffs and Trade (GATT), a social clause was introduced into the North American Agreement on Labor Cooperation (NAALC), concluded in 1993 between the United States, Canada and *Mexico*, in parallel with the adoption of the North American Free Trade Agreement (NAFTA).⁵⁸ Annex 1 to the NAALC lists 11 labour principles that parties to the Agreement are committed to promoting, including the establishment of minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements (sixth principle). While the Agreement indicates that these principles are not intended to “establish common minimum standards for their domestic law” (Annex 1, Introduction), each party undertakes to “promote compliance with and effectively enforce its labor law through appropriate government action” (Article 3(1)). A dispute settlement mechanism is provided for in the event that one party considers that another has systematically failed to effectively enforce labour standards. This can lead to the setting up of an evaluation committee of experts and eventually to the establishment of a special arbitral panel, and, where necessary, a monetary enforcement assessment may be imposed, although only for three of the principles, including the minimum wage.⁵⁹ Since the conclusion of the NAALC, labour standards, including those on acceptable working conditions with regard

⁵⁵ See, for instance, S. Polaski: “Protecting labor rights through trade agreements: An analytical guide”, in *Journal of International Law and Policy* (Vol. 10, No. 1, July 2004), pp. 13–25; C. Doumbia-Henry and E. Gravel: “Free trade agreements and labour rights: Recent developments”, in *International Labour Review* (2006, Vol. 145, No. 3), pp. 211–234; C. Deblock: *Les Etats-Unis, le commerce et les normes du travail: Une perspective historique* (Montreal Institute of International Studies, July 2008).

⁵⁶ The idea of the GSP consists of programmes of non-reciprocal preferential treatment in relation to tariffs granted by industrialized nations for the benefit of some developing countries in order to promote economic growth. For more information, see the website of the United Nations Conference on Trade and Development (UNCTAD): <http://unctad.org/en/pages/DITC/GSP/Generalized-System-of-Preferences.aspx>.

⁵⁷ Generalized System of Preferences Renewal Act 1984, section 2467, Article 503. By way of comparison, the Generalized Scheme of Preference (GSP) established by the European Union provides for more favourable measures (GSP plus) for some countries that have ratified 27 international instruments on human rights and workers’ rights, which do not, however, include Convention No. 131 or any other instrument on minimum wages. See Article 9 and Annex I of Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalized tariff preferences and repealing Council Regulation (EC) No. 732/2008.

⁵⁸ A cooperation agreement on labour, containing similar provisions, also supplements the free trade agreement concluded in 1997 between Canada and *Chile*, which aims, inter alia, to facilitate the accession of *Chile* to the NAALC.

⁵⁹ Articles 27–41 of the NAALC; in total, 41 complaints have so far been filed under the NAALC. As of June 2013, no case had reached the stage of an evaluation committee of experts; see IILS: *Social dimensions of free trade agreements*, Geneva, ILO, 2013, pp. 42–45.

to minimum wages, have been systematically included in the trade agreements negotiated by the United States.⁶⁰ It may also be recalled that the bilateral agreement concluded between the United States and Cambodia on trade in textile products, which linked the increase in Cambodia's export quotas with an improvement in working conditions through the effective implementation of national legislation (including on minimum wages) and fundamental rights at work, and was the basis for the establishment of the ILO's *Better Factories Cambodia* project.⁶¹ In the context of this project, the ILO has, for the first time, agreed to monitor factory working conditions in practice. It has observed that the regular factory visits have led to a substantial improvement in working conditions, including compliance with minimum wage legislation.⁶²

30. In the preceding paragraphs, the Committee has made reference to a range of international and regional provisions that recognize and encourage the importance of a minimum wage. Apart from examples reflecting ILO experience that is summarized in its reports and programmes, the Committee has not attempted to evaluate the effectiveness of these provisions.

Section 6. Outcome of the Working Party on Policy regarding the Revision of Standards

31. The Working Party on Policy regarding the Revision of Standards (known as the "Cartier Working Party", after its Chairperson, Jean-Louis Cartier), was set up in March 1995 by the Governing Body, with the mandate to assess the need for the revision of standards, examine the criteria that could be applied to the revision of standards and analyse the difficulties and inadequacies of the standard-setting system with a view to proposing effective practical measures to remedy the situation.⁶³ It examined Conventions Nos 26, 99 and 131 on minimum wage fixing at its third and fourth meetings in November 1996 and March 1997.⁶⁴ At the Working Party's recommendation, the Governing Body decided to maintain the status quo⁶⁵ with regard to Conventions Nos 26 and 99, which should be re-examined in due course. It also invited member States to contemplate ratifying Convention No. 131 and to inform the Office of any obstacles or difficulties encountered that might prevent or delay ratification. The Governing Body also decided that the Working Party (or the Committee

⁶⁰ For a list of these agreements, see the website of the United States Department of Labor: <http://www.dol.gov/ilab/programs/otla/freetradeagreement.htm#labor-provisions>. The scope of obligations of the parties to these agreements is, however, limited, as shown by Article 18.8 of the free trade agreement with *Chile*, which provides that the setting of standards and levels in respect of minimum wages by each party shall not be subject to obligations under that chapter. Each party's obligations pertain to enforcing the level of the general minimum wage established by that party.

⁶¹ For further information, see: <http://betterfactories.org/>. This innovative project was the model for the establishment of the broader and more ambitious *Better Work* programme in 2007.

⁶² S. Polaski: *Harnessing global forces to create decent work in Cambodia* (ILO, ILS Research Series 119, 2009), p. 13. See also: *Thirtieth synthesis report of the Project Advisory Committee on working conditions in the Cambodia's garment sector*, July 2013. Available at: <http://betterfactories.org/?p=6706>.

⁶³ The Working Party's mandate can be found annexed to GB.267/LILS/WP/PRS/2.

⁶⁴ GB.267/LILS/WP/PRS/2 and GB.268/LILS/WP/PRS/1.

⁶⁵ The Governing Body classified Conventions Nos 26 and 99 as "other instruments", i.e. instruments that are not fully up to date, but remain relevant in certain respects. See GB.283/LILS/WP/PRS/1/2, p. 33 and table 1.

on Legal Issues and International Labour Standards (LILS)) would re-examine the status of Convention No. 131 in due course.⁶⁶

Section 7. Ratification status

32. By 14 December 2013, Convention No. 131, which entered into force on 29 April 1972, had been ratified by 52 States, or 19 more than at the time of the publication of the 1992 General Survey on minimum wage fixing. No denunciations of the Convention have been registered. In other words, ratifications of the Convention have increased by more than 50 per cent over the past two decades. The list of States that have ratified the Convention is attached as Appendix II to this survey. A global map of ratifications is also appended at the end of this survey.

Section 8. Available information

33. For the present General Survey, the Committee had before it reports submitted by 129 member States under article 19 of the ILO Constitution. Full indications on the reports due and received are contained in Appendix II. Moreover, according to its usual practice, the Committee has also made use of the information contained in the reports submitted under articles 22 and 35 of the Constitution by those member States that have ratified the Convention. Finally, the Committee has duly taken into account the observations submitted by 95 employers' and workers' organizations, the list of which is contained in Appendix III.

Section 9. Outline of the General Survey

34. The General Survey is divided into nine chapters. Chapter I reviews the definitions of key concepts, such as "minimum wage", "living wage" and "fair wage", as well as the objectives of Convention No. 131 and Recommendation No. 135. Chapter II covers the scope of Convention No. 131 and the exemptions that have been made at the national level. Chapter III examines the different methods of fixing minimum wages, while Chapter IV addresses the scope of the minimum wage rates that are fixed. Chapter V examines issues relating to the full consultation of employers' and workers' organizations on the different aspects of the minimum wage system, and the participation of the social partners, as well as other actors, in minimum wage fixing machinery. Chapter VI addresses the criteria used for determining and adjusting minimum wage levels. Chapter VII discusses measures for applying minimum wages in practice, including the dissemination of information on the rates applicable, sanctions incurred for failure to comply with the minimum wages in force, the right of workers to recover any sums due to them and to be protected against reprisals, and the role of the social partners in these procedures. Chapter VIII examines the role that minimum wage policies can play in a context of economic crisis and the implementation of austerity measures. Finally, Chapter IX provides an overview of the difficulties faced by certain States in the implementation of the Convention, the prospects for further ratifications of

⁶⁶ GB.268/LILS/5(Rev.1), paras 67, 68 and 70. In November 1999, the Cartier Working Party also examined the Recommendations associated with Conventions Nos 26, 99 and 131. On the basis of the Working Party's recommendations, the Governing Body decided to maintain the status quo with regard to Recommendations Nos 30 and 89 and invited member States to implement Recommendation No. 135. See GB.276/LILS/5(Rev.1), paras 52 and 57.

Convention No. 131 and the requests by constituents for technical assistance. The survey concludes with the Committee's general conclusions on the current relevance of the instruments considered and the action that can be taken by the Organization in this area.

Chapter I

Definitions and objectives of the minimum wage standards

Section 1. Definitions

1. The concept of the minimum wage

35. As the Committee emphasized in its 1992 General Survey on minimum wages, no ILO instrument defines the term “minimum wage”.¹ The Committee considered that the minimum wage may be understood to mean “the minimum sum payable to a worker for work performed or services rendered, within a given period, whether calculated on the basis of time or output, which may not be reduced either by individual or collective agreement, which is guaranteed by law and which may be fixed in such a way as to cover the minimum needs of the worker and his or her family, in the light of national economic and social conditions”.² This definition refers both to the binding nature of minimum wages, regardless of the method of fixing them, and to the major social and economic considerations that should be taken into account in determining their rates. It does not indicate, however, the elements to be included in the minimum wage. Is it to be understood as containing only the basic wage or, on the contrary, total remuneration should be taken into account? Convention No. 131 and Recommendation No. 135 are silent on this point.

36. Conventions Nos 95 and 100, nevertheless, define the concepts of “wages” and “remuneration”. Article 1 of Convention No. 95 provides that, in the Convention “the term wages means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of a written or unwritten contract of employment by an employer to an employed person for work done or to be done or for services rendered or to be rendered”. The Committee noted that, as shown by the preparatory work of the instruments, the term “wages” within the meaning of Convention No. 95 does not have the technical meaning that is often ascribed to it in contrast to that of “remuneration”, but rather covers all the various forms and components of labour remuneration.³ Conversely, Convention No. 100 draws a

¹ ILO: *General Survey of 1992*, para. 27.

² *ibid.*, para. 42.

³ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1B), General Survey of the reports concerning the Protection of Wages Convention (No. 95), and the Protection of Wages Recommendation (No. 85), 1949, Protection of wages: Standards and safeguards relating to the payment of labour remuneration, International Labour Conference, 91st Session, Geneva, 2003, para. 37.

distinction between wages and remuneration, providing in Article 1(a) that, for the purpose of the Convention, “the term remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment”.

37. The term “wages” is not therefore unambiguous in ILO instruments, as the Government of Kuwait noted in its report submitted for the present General Survey, suggesting that the concept be reconsidered and that the possibility be sought of identifying a new internationally agreed concept. The review of the law and practice of member States shows that there are broad disparities regarding the components of the minimum wage. Yet, as the Committee will show, this is a crucial issue in ensuring compliance with fixed minimum wage rates.

2. The components of the minimum wage

38. A number of national laws do not indicate the elements of remuneration that make up the minimum wage, and among those that contain indications on the subject, it is difficult to identify general trends due to significant differences on the following points: the inclusion of the basic wage only or, on the contrary, the inclusion of all or part of bonuses, tips, commissions, allowances and other additional payments; the taking into account of only money wages or, where applicable, also the cash value of benefits in kind; and the indication of whether or not “wages” within the framework of the legal provisions on the minimum wage, exclude overtime pay.

39. The legislation in several countries simply provides that only the basic wage is taken into account for the purpose of the minimum wage. This is the case, for example, in *Antigua and Barbuda*,⁴ *Chile*,⁵ *Hungary*,⁶ *Malaysia*⁷ and *the former Yugoslav Republic of Macedonia*.⁸ In other cases, the law specifically excludes certain elements from the minimum wage. For example, the following are excluded in: *Armenia*,⁹ wage supplements, bonuses and other incentives; *Azerbaijan*,¹⁰ bonuses; *Bahamas*,¹¹ tips, bonuses and other gratuities; *China*,¹² allowances for shift work, night work and special working conditions (such as low or high temperatures, underground work, exposure to hazardous substances, etc.); *Guinea-Bissau*,¹³ compensation for risks, isolation and other conditions, gifts, bonuses and equivalent services; *Honduras*,¹⁴ occasional payments constituting gifts, and the amounts and benefits that employees receive, not to meet their needs or increase their wealth, but to fully exercise their functions, such as

⁴ (1) s. C21(1).

⁵ (2) s. 42(a).

⁶ (1) s. 136(1).

⁷ (4) s. 2.

⁸ (3) s. 2.

⁹ (2) s. 179(1)(2).

¹⁰ (2) s. 155(5).

¹¹ (2) s. 2.

¹² (2) s. 12.

¹³ (1) s. 113.

¹⁴ (2) s. 362.

representation costs, transportation and social benefits; Israel,¹⁵ family allowances, seniority bonuses, shift work allowances, the 13th month's wage and reimbursement of expenses; *Kyrgyzstan*,¹⁶ bonuses and payments for work performed in special climate conditions and in areas affected by radioactive contamination; *Republic of Moldova*,¹⁷ bonuses and incentive payments or compensation; *Nepal*,¹⁸ allowances and other benefits; Sao Tome and Principe,¹⁹ risk, isolation and other bonuses, as well as gifts and other benefits; Slovakia,²⁰ wage supplements for working on a public holiday or at night, and allowances for difficult working conditions; *Ukraine*,²¹ bonuses and allowances, and incentive payments or compensation. In addition, the laws of Cambodia²² and Paraguay²³ exclude from wages the benefits provided by employers solely to help workers perform their duties. Finally, in 2011, controversy arose in *Lebanon* over the question of whether to include transport and education allowances in the minimum wage. In the end, a decree providing for the separate payment of these benefits, in accordance with past practice, was published in February 2012.²⁴

40. Conversely, in a number of countries, wage supplements are considered fairly broadly for the purpose of calculating the minimum wage. The Government of *Brazil* indicated in a recent report on the application of Convention No. 131 that, according to the Federal Supreme Court, article 7(IV) of the Constitution, which provides for the fixing of the minimum wage by law, refers to the total remuneration received by an employee and not the basic wage. In *Cameroon*,²⁵ the guaranteed interoccupational minimum wage (SMIG) is defined as a basic wage floor, to which any contractual or agreed bonuses and allowances granted to a worker recruited without any skills may be added. According to the interpretation of this provision, in determining whether an employee has received at least the minimum wage, the basic wage (the wage properly so-called) has to be taken into account, as well as supplements, such as commissions.²⁶

41. In *France*,²⁷ the hourly wage to be taken into consideration to ensure that it is at least equal to the index-linked interoccupational minimum growth wage (SMIC) is that corresponding to an hour of actual work, taking into account the various additional sums that are actually wage supplements, except for any sums paid as reimbursement of

¹⁵ (1) s. 3.

¹⁶ (1) s. 154(4).

¹⁷ (1) s. 131(3).

¹⁸ (1) s. 2(r).

¹⁹ (1) s. 102.

²⁰ (2) s. 120(2).

²¹ (2) s. 95(2); (3) s. 3(2). There are similar provisions in Singapore: (1) s. 50(2).

²² (1) s. 103.

²³ (2) s. 230.

²⁴ Decree No. 7573 of 22 February 2012 provisionally granting a daily transport allowance and scholarships to salaried employees and wage-earners. The question was then addressed by Law No. 217 of 30 March 2012, granting an additional allowance to salaried employees, and by Decree No. 8819 of 4 September 2012 amending section 1 of Decree No. 7573.

²⁵ (3) s. 1.

²⁶ Prof. P.-G. Pougoué (ed.): *Code du travail camerounais annoté* (Yaoundé, Presses Universitaires d'Afrique, 1997), p. 104, referring to the Supreme Court, 4 Apr. 1967, TPOM, 234, p. 189.

²⁷ (1) s. D.3231-6.

expenses and the transport allowance. In Mauritania,²⁸ additional emoluments that are of the nature of wage supplements, except for the reimbursement of expenses, are taken into account when calculating the minimum wage. Finally, in *Portugal*,²⁹ the minimum wage includes sales commissions and production bonuses, allowances due under the contract or other provisions, and those which, because of their importance and their regular and permanent nature, are to be considered an integral part of remuneration in accordance with practice.

42. The question of whether or not tips are included in the minimum wage is crucial, especially for workers in hotels and restaurants.³⁰ In *Morocco*,³¹ in non-agricultural activities, tips are taken into account in assessing the statutory minimum wage. In Canada (Quebec),³² the legislation establishes, for employees receiving tips, a minimum wage rate that is lower (by slightly less than 15 per cent) than the general rate. However, the employer must still pay these employees the minimum wage applicable to them in addition to tips received from customers. In the United States, under federal law, employers are required to pay directly to workers who receive tips a minimum wage that is much lower than the federal minimum wage (it is less than a third of the latter). However, if the amount of the wage paid by the employer when supplemented by tips is not at least equal to the federal minimum wage, the employer has to pay the difference.³³ In *France*,³⁴ tips are taken into account in determining whether a worker is paid at the applicable minimum wage but, when the amount of the tips does not ensure the minimum wage, the employer is required to make up the difference. Conversely, in the United Kingdom,³⁵ since a legislative reform enacted in 2009, employers are

²⁸ (1) s. 196.

²⁹ (2) ss 260(3)(a) and 274.

³⁰ In this regard, the Committee recalls that, under Article 6(2) of the Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172), regardless of tips, the workers concerned shall receive a basic remuneration that is paid at regular intervals.

³¹ (1) s. 357.

³² (22) s. 50; (23) ss 1 and 4.

³³ (1) s. 3(m). Some federate states have adopted laws specifically governing the minimum wage of employees who receive tips. According to the report submitted by the Government, any workers subject to both federal law and the laws of a federate state may avail themselves of the most favourable provisions. As tips are subject to both income taxes and Federal Insurance Contribution Act (FICA) tax, unreported tip income has become a particularly challenging enforcement issue, especially in the restaurant industry. According to estimates from the Internal Revenue Service (IRS), fewer than 40 per cent of all tips received are reported, an estimated US\$9–12 billion in unreported income. Tax authorities use different methods, such as the “aggregate estimation” of the business earnings in order to reach an assessment of the taxes due; see, for instance, the case *Fior d’Italia* (536 US 238 (2002)). The prevalence of unreported tip income also makes it more difficult to ascertain whether employers have any responsibility to pay the differential between tip income and the federal minimum wages.

³⁴ This rule raises no problems where tips are centralized by the employer, who then knows their amount. However, when tips are given by the customer directly to employees, they have to prove that they have not received the minimum wage. See *Cour de Cassation, Chambre Sociale* (Court of Cassation, Social Chamber), 29 Nov. 1962, *Bulletin Civile*, No. 86.

³⁵ (2) s. 31(1)(e), as amended in 2009. Previously, only tips that were not paid to employees through the payroll system had been excluded from wages considered for the purpose of the minimum wage. In practice, a distinction was made between tips paid in cash and those that were added to cheque and credit card payments, the latter being taken into account for the application of the minimum wage. This legal system led several restaurant waiters to file an application with the European Court of Human Rights. The Court considered, however, that the applicants could not maintain that they had a right to the tips and a separate right to minimum remuneration calculated without reference to those tips. In the Court’s opinion, it is for the applicants to come to a contractual arrangement with their employer as to how tips were to be dealt with from the point of view of their wage entitlement. See European Court of Human Rights, second section, *Nerva and Others v. the United Kingdom*, No. 42295/98, judgment of 24 Sep. 2002.

required to pay their employees the national minimum wage in addition to the tips they receive. Similarly, the Minimum Wages Act of the Bahamas³⁶ does not include tips in wages.

43. The question of the number of hours for which remuneration is taken into account to determine whether the legislation on minimum wages is respected also arises, especially when the minimum wage is not fixed on an hourly basis. A number of national laws specify that the prescribed minimum wage corresponds to normal working hours. This is the case, for example, in *Costa Rica*,³⁷ *Israel*,³⁸ *Kyrgyzstan*,³⁹ *Nicaragua*⁴⁰ and *Romania*.⁴¹ For the purposes of the National Minimum Wage Act in Nigeria,⁴² “wage” means the total emolument paid every month to a worker for performing services on the basis of a 40-hour week. The legislation in *Latvia*⁴³ refers to the fixing of a minimum monthly wage for normal hours of work, in addition to a minimum hourly wage. In other countries, the issue is dealt with differently, with overtime pay being excluded from the minimum wage. This is the case in *Azerbaijan*,⁴⁴ *China*,⁴⁵ *Guinea-Bissau*,⁴⁶ *Sao Tome and Principe*⁴⁷ and *Slovakia*.⁴⁸ In *France*⁴⁹ and *Mauritania*,⁵⁰ overtime pay does not enter into the calculation of wages for the purpose of the minimum wage. In contrast, the Labour Code of Honduras⁵¹ provides that wages include overtime pay.

44. There are also differences in the law and practice of member States on whether or not benefits in kind are to be included in the calculation of the minimum wage. In some countries, including *Antigua and Barbuda*,⁵² *Argentina*,⁵³ *Bahamas*,⁵⁴ *Chile*,⁵⁵ *Islamic Republic of Iran*,⁵⁶ *Kenya*,⁵⁷ *Mexico*,⁵⁸ *Panama*⁵⁹ and *Romania*,⁶⁰ only money wages

³⁶ (2) s. 2.

³⁷ (8) s. 3. It is further specified that, in the case of a minimum hourly wage, reference is made to the normal hours worked in the daytime.

³⁸ (1) s. 3.

³⁹ (1) s. 151.

⁴⁰ (2) s. 85.

⁴¹ (2) s. 164(1).

⁴² (3) s. 9.

⁴³ (2) s. 61(2).

⁴⁴ (2) s. 155(5).

⁴⁵ (2) s. 12.

⁴⁶ (1) s. 113.

⁴⁷ (1) s. 102.

⁴⁸ (2) s. 120(2). This is also the case in *Jordan*: (2) s. 2; *Senegal*: (2) s. 3; and *Singapore*: (1) s. 50(2).

⁴⁹ (1) s. D.3231-6.

⁵⁰ (1) s. 196.

⁵¹ (2) s. 361.

⁵² (1) ss C3 and C21(1).

⁵³ (2) s. 116.

⁵⁴ (2) s. 6(1).

⁵⁵ (2) s. 42(a).

⁵⁶ (1) s. 42.

⁵⁷ (2) s. 50.

are included in the minimum wage. That has also been the case in *Spain* since 2010.⁶¹ In *Seychelles*,⁶² the amounts provided by the employer for housing or food can only be deducted from wages above the level of the minimum wage. In *Malta*,⁶³ the law provides that the employer is to provide an employee with food, housing and other benefits in kind in addition to the minimum wage. The laws of other States consider benefits in kind as part of wages. This is the case, for example, in *France*,⁶⁴ *Honduras*,⁶⁵ *Luxembourg*⁶⁶ and *Mauritania*.⁶⁷ In *Portugal*,⁶⁸ the minimum wage includes benefits in kind to which employees are entitled arising out of their work, within certain limits set by law. In *Morocco*,⁶⁹ benefits in kind are only taken into account in assessing the statutory minimum wage for non-agricultural activities. In *Lesotho*,⁷⁰ where workers benefit from housing, the applicable minimum wage may be reduced by such amount as may be determined by the relevant wages order. Finally, the legislation in *Japan*⁷¹ provides that where wages are not paid in cash, or where the price of food and other benefits provided by the employer is deducted from wages, the valuation of such benefits shall be fair and reasonable for the application of the minimum wage.

45. The Committee notes that there are sometimes very significant differences between the laws of member States regarding the components of the minimum wage. For example, the legislation of *Antigua and Barbuda*⁷² includes only the basic wage, payable in cash, whereas that of *Benin*⁷³ defines “wages” to mean the basic or minimum salary (however designated or calculated) and all other emoluments paid directly or indirectly, in cash or in kind, by the employer to the worker by virtue of his or her employment and fixed either by agreement, or by regulations or collective agreement.

46. In terms of the methodology used to make this determination, the Committee has also found differences of approach. Some laws contain detailed lists of the elements taken into account for the purposes of the minimum wage, or excluded therefrom. This is

⁵⁸ (2) s. 90(1).

⁵⁹ (2) s. 173.

⁶⁰ (2) s. 165.

⁶¹ (2) s. 26(1), as amended by Act No. 35/2010 of 17 Sep. 2010 on urgent labour market reform measures.

⁶² (2) s. 42(1).

⁶³ (2) s. 18.

⁶⁴ (1) s. D.3231-6.

⁶⁵ (2) s. 361.

⁶⁶ (1) s. L.221-1.

⁶⁷ (1) s. 196. This is also the case in *Senegal*: (2) s. 3.

⁶⁸ (2) s. 274.

⁶⁹ (1) s. 357.

⁷⁰ (1) s. 58(1).

⁷¹ (3) s. 5.

⁷² (1) ss C3 and C21(1).

⁷³ (1) s. 207. The definition of “wages” in the Labour Code of Togo is practically identical: see (2) s. 117. In *Paraguay*, “wages” also means the remuneration payable by an employer to a worker for the services provided or to be rendered, in accordance with the terms of the employment contract, however designated or calculated, provided that it can be valued in cash; see (2) s. 227.

particularly the case in the United Kingdom⁷⁴ and the *Netherlands*.⁷⁵ The approach followed is different in *France*. The Labour Code contains a relatively brief definition of the minimum wage. It provides that “the hourly wage to be taken into consideration to ensure that it is at least equal to the interoccupational minimum growth wage shall be that corresponding to an hour of actual work, taking into account the various benefits in kind and additional emoluments that are in practice wage supplements”.⁷⁶ The only clarification is the exclusion of the sums paid as reimbursement of expenses, overtime pay as provided by law and the transport allowance. This definition, and particularly the close relationship it establishes between wages and hours actually worked, has given rise to abundant case law. In a series of recent decisions,⁷⁷ the Court of Cassation has held that the lump-sum remuneration for breaks granted by collective agreement to supermarket employees shall not be included in the elements for the verification of the minimum wage, since the employees are not available to their employer during breaks, which do not therefore constitute time actually worked and the bonuses that are paid to them do not arise from work. As shown by this case law, the precise identification of the elements of remuneration taken into account for the purpose of the minimum wage is very important for monitoring compliance with the minimum wage rates fixed. In this respect, the French Court of Cassation concluded that, by wrongly including the lump-sum remuneration for breaks in wages, the employer concerned had in practice paid wages below the minimum wage to the employees concerned.

47. In some cases, the question of the definition of the minimum wage may also be the subject of tension between the social partners. In Algeria, for example, the Industrial Relations Act was amended in 1994 by adding section 87bis, providing that the national guaranteed minimum wage includes the basic wage, allowances and bonuses of all kinds, except for allowances paid as reimbursement of expenses incurred by the worker. In view of the impact of such a broad definition on the purchasing power of workers, the repeal of this provision is an important demand of the labour movement in the country.⁷⁸

⁷⁴ (2) ss 30–37. The elements taken into account include payments in cash and the value ascribed to the provision of housing, to the extent determined by the applicable rules. Payments to be deducted include payments made by the employer to the worker for periods during which the worker was absent from work or involved in a collective labour dispute, allowances other than allowances attributable to the performance of the worker in carrying out his work, payments made by the employer representing amounts paid by customers in the form of tips or other gratuities, the reimbursement of expenses incurred by workers in connection with their employment, and amounts withheld by the employer for his/her sole benefit, except for those connected with the worker's conduct, or as reimbursement of a wage advance. In addition to this information, the Government website (www.gov.uk) contains a guide to the minimum wage for different categories of employees, as well as a calculator enabling everyone to enter the exact components of their wages to ensure that they are receiving the national minimum wage.

⁷⁵ (1) s. 6(1). The term “wages” in the Minimum Wage and Minimum Leave Allowance Act means any cash income received under an employment contract, subject to certain exceptions, including: overtime pay; leave allowances; payments under profit-sharing schemes; payments made on special occasions; payments intended to settle one or more recoverable claims after a certain period of time or subject to a particular condition; allowances, to the extent that they can be considered to cover the expenses incurred by a worker arising out of the contract of employment; and special allowances for “breadwinners” and “heads of household”. The Government has published a brochure with additional information enabling workers to verify whether they are receiving at least the minimum wage. See Ministry of Social Affairs and Employment: *The minimum wage: Everyone is entitled to it* (Jan. 2011).

⁷⁶ (1) s. D.3231-6. To facilitate its application, the Ministry of Labour has published a very comprehensive table of the elements included and excluded for the basis of verification of the minimum wage, <http://travail-emploi.gouv.fr/informations-pratiques,89/fiches-pratiques,91/remuneration,113/le-smic,1027.html>.

⁷⁷ See, in particular, Court of Cassation, Social Chamber, judgment No. 11-25678 of 31 Oct. 2012; Court of Cassation, Criminal Chamber, judgments Nos 10-87.019, 10-83.988 and 10-87.185 of 15 Feb. 2011.

⁷⁸ A working group mandated to examine the financial impact of such repeal was established by the 14th tripartite meeting held in October 2011.

48. The question of whether to include a provision in Convention No. 131 regarding the partial payment of the minimum wage in kind was submitted to member States in the questionnaire prepared by the Office for the first Conference discussion. It emerged from the responses that the ratification of a new Convention would run into difficulties if it did not include a provision authorizing the partial payment of minimum wages in kind. However, many governments felt that this practice, while it might be necessary in certain circumstances, should be discouraged. In the light of these comments, the proposed conclusions for the Convention provided that the partial payment of minimum wages in the form of allowances in kind may be authorized in the cases in which and on the conditions on which they are authorized by Conventions Nos 95 and 99.⁷⁹ The proposed conclusions for the Recommendation, however, indicated, first, that the payment of any part of minimum wages in kind should be discouraged, and secondly, that arrangements should be made for the valuation of any part of minimum wages paid in kind to be subject to the approval of the competent authority, which should, as far as possible, fix the maximum percentage of minimum wages which may be paid in kind in particular activities or particular circumstances.⁸⁰ The first point was deleted during the first Conference discussion, while the second was the subject of extensive discussions in the Committee on Minimum Wage based on a compromise text proposed by a working party that it had established. In the absence of agreement, the Committee finally decided, by a narrow majority, to delete that point as well.⁸¹

49. The preparatory work for Convention No. 131 shows that the fear of abuses in this area remained a concern for many delegates at the Conference. This question is of particular importance for certain categories of workers who are especially vulnerable to the risk of abuse, including domestic workers. The Committee recalls in this respect that, in accordance with Paragraph 14(d) of the Domestic Workers Recommendation, 2011 (No. 201), when provision is made for the payment in kind of a limited proportion of remuneration, Members should consider ensuring that, when a domestic worker is required to live in accommodation provided by the household, no deduction may be made from the remuneration with respect to that accommodation, unless otherwise agreed to by the worker. *The Committee suggests that consideration could be given to reviewing national provisions which include all or part of allowances in kind in the minimum wage, given the difficulty of defining the cash value of such allowances, with a view to ensuring that the minimum wage retains its full meaning and really allows workers to meet their needs and those of their families, and are free to dispose of their wages.*

⁷⁹ Under Article 4 of Convention No. 95, the partial payment of wages in the form of allowances in kind may be authorized by national laws or regulations, collective agreements or arbitration awards, but only in industries or occupations where this method of payment is customary or desirable because of the nature of the industry or occupation concerned. In that case, appropriate measures should be taken to ensure that: (a) such allowances in kind are appropriate for the personal use of the worker and his or her family; and (b) the value attributed to such allowances is fair and reasonable. Article 2 of Convention No. 99 contains similar provisions regulating the partial payment of minimum wages – and not of wages, as in Convention No. 95 – in kind. These provisions are binding for States that have ratified these Conventions and can serve as useful guidance for other States.

⁸⁰ ILC: Report VII(1), questions 26–27, and Report VII(2), p. 117, and points 7 and 29 of the proposed conclusions, 53rd Session, Geneva, 1969.

⁸¹ ILO: *Record of Proceedings*, International Labour Conference, 53rd Session, Geneva, 1969, p. 681, para. 35 and p. 685, para. 81. During the plenary discussion at the Conference, the Worker Vice-Chairperson of the Committee on Minimum Wage said that the failure to refer to payment of part of the minimum wage in kind was in accordance with current trends. He expressed the hope that the practice, which still existed in some countries, would cease because workers must be free to receive their wages in the form that they wished (*ibid.*, p. 469). The subject was not addressed by the Conference during the second discussion.

50. *In addition to the importance of having a clear definition of the minimum wage, and taking into account Paragraph 1 of Recommendation No. 135 which provides that “minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families”, the Committee wishes to emphasize the need to bear in mind the role of the minimum wage in combating poverty and preserving the purchasing power of workers. This consideration should encourage the tripartite constituents to endeavour to limit the items included in the minimum wage to what appears to them strictly necessary in view of the situation in the country. The Committee therefore considers that caution is required in taking into account benefits in kind.*

3. Minimum wage, living wage and fair wage

51. Although Convention No. 131 and Recommendation No. 135 seek to ensure that the minimum wage is set at a certain level that allows workers and their families to meet their needs, they do not contain precise indications on the amount of the minimum wage, or even on the types of needs to be taken into account. This omission reflects the discretionary power granted by the Convention to States to set minimum wage rates, in full consultation with the social partners, at levels that are appropriate to national circumstances, taking into account the needs of workers and their families and economic factors, including the level of economic development of each country. The concept of a minimum wage refers to the idea of fixing, by legislation or by other methods, a wage floor that has a binding force. It should allow workers and their families to lead a decent life, but there is no guarantee, however, that the minimum wages actually established in the various countries of the world meet this condition. Other concepts, such as the living wage and a fair wage, allow a better understanding of this dimension of the minimum wage.

52. The Preamble to the ILO Constitution of 1919 proclaims the urgency of improving conditions of labour through, among other measures, “the provision of an adequate living wage”. While there is no universally accepted definition of a living wage,⁸² the idea behind it is that workers and their families should at least be able to lead a simple but decent life considered acceptable by society, in light of its level of economic development. They should be able to live above the poverty line and participate in social and cultural life.⁸³

53. The concept of a living wage, therefore, refers both to the existence of a minimum level of remuneration and to an acceptable standard of living. This expression is not easy to translate in French or Spanish without altering the meaning. The term *salaire minimum convenable* (appropriate minimum wage), which echoes the Preamble of the Constitution, has sometimes been used.⁸⁴ Some authors refer to a *salaire de subsistence* (living wage), sometimes acknowledging that “even the term ‘living wage’ is misleading in some ways, since workers are able to ‘live’ when paid a sub-living wage. A poorly

⁸² See, for instance, R. Anker: *Estimating a living wage: A methodological review* (Geneva, ILO, 2011), p. 1; K. Lawton and M. Pennycook: *Beyond the bottom line: The challenges and opportunities of a living wage* (London, Institute for Public Policy Research/Resolution Foundation, 2013), p. 10; S. Luce: “Living wage policies and campaigns: Lessons from the United States”, in *International Journal of Labour Research* (Vol. 4, No. 1, June, 2012), pp. 11–26.

⁸³ R. Anker, op. cit., p. 5.

⁸⁴ F. Aubry: *Le Living Wage aux Etats-Unis et au Canada: Un mouvement contemporain pour un salaire minimum convenable*, Paper for the Conférence Régionale des Elus de Montréal, Montreal, Sep. 2010, p. 7, note 1.

paid worker could work overtime, have several jobs and/or be supported by another family member.”⁸⁵ Others refer to the *salairé (minimum) vital* (minimum living wage). This term, however, only imperfectly translates the concept of a living wage, which takes into account both the subsistence needs of workers and their families, such as food and housing, as well as social and cultural needs, such as education and leisure. To avoid ambiguity, the Committee has therefore decided to use the term *living wage* in all the language versions of this General Survey.

54. The willingness to have the workers’ right to a living wage recognized and respected is not a new phenomenon.⁸⁶ The past 20 years have, however, seen a renewal of efforts for the adoption of a living wage in some countries. In the United States, the movement was launched in Baltimore in 1994 by trade unions and religious associations, after finding that a large number of working poor were forced to seek food aid even though they were employed full time.⁸⁷ The other idea behind this campaign was that companies that underpay their employees should not receive public funds. Otherwise, the taxpayer would have to bear a double burden, participating in both the payment of the financial support granted in one form or another to the company concerned and the financing of the social assistance paid to the working poor.⁸⁸ In Baltimore, the campaign led to the adoption of a municipal ordinance applicable in 1996 and requiring enterprises benefiting from contracts awarded by the city to pay adequate remuneration to their employees.⁸⁹ After this initial success, similar ordinances were adopted by more than 140 cities, counties and universities, including most major cities in the United States.⁹⁰

55. Initiatives for the adoption of a living wage have also emerged in the United Kingdom and have received increased attention since the revival of the movement in 2000 by the East London Community Organisation (TELCO), a coalition of trade unions and religious and community organizations.⁹¹ Today, the Living Wage Foundation encourages businesses to pay, on a voluntary basis, the amount of the living wage to their employees. Two separate amounts are set annually: the living wage for London, and another one for the rest of the United Kingdom.⁹² In London alone, nearly 200 employers have already made this commitment, of which a little under half have been certified through the formal process established in 2011. Companies that bid for government contracts for the 2012 Olympics were also encouraged to apply the living

⁸⁵ R. Anker: “Living wages around the world: A new methodology and estimates of internationally comparable living wages”, in *International Labour Review* (Vol. 145, No. 4, Dec. 2006), pp. 309–338, note 1.

⁸⁶ In 1933, at the time of the National Industrial Recovery Act, Franklin D. Roosevelt said: “No business which depends for existence on paying less than living wages to its workers has any right to continue in this country By living wages I mean more than a bare subsistence level. I mean the wages of decent living.” Published on the website of the American Presidency Project, <http://www.presidency.ucsb.edu>.

⁸⁷ C. Niedt et al.: *The effects of the living wage in Baltimore* (Washington, DC, Economic Policy Institute, Working Paper No. 119, Feb. 1999).

⁸⁸ F. Aubry, op. cit., p. 13.

⁸⁹ In 1996, while the federal minimum wage was US\$5.15 an hour, the living wage in Baltimore was set at US\$6.10. The amount of the federal minimum wage remained unchanged until 2007, while the Baltimore living wage was raised to US\$7.70 in 1999.

⁹⁰ For a summary, see <http://www.nelp.org/page/-/Justice/2011/LocalLWLawsCoverageFINAL.pdf?nocdn=1>.

⁹¹ K. Lawton and M. Pennycook, op. cit., p. 12.

⁹² See D. Hirsch and R. Morre: *The living wage in the United Kingdom: Building on success* (Loughborough University, Leicestershire, Centre for Research in Social Policy/Living Wage Foundation, 2011).

wage. A survey conducted in July 2011 among workers on the Olympic site revealed that 81.2 percent of them reported receiving at least the living wage.⁹³

56. In Canada, the late 1990s saw the launch of the campaign “Make the Minimum Wage a Living Wage”.⁹⁴ Its initiators in the National Anti-Poverty Organization⁹⁵ called on the federal Government in particular to reintroduce a minimum wage for employers under federal jurisdiction⁹⁶ by setting it at a level that would enable any person working full time to live above the poverty line. This demand was also echoed in the report of the Federal Labour Standards Review Commission published in 2006.⁹⁷ Along with this national campaign, a movement to raise the minimum wage developed in several provinces, with mixed success. At the local level, two types of campaigns were conducted. In some cases, such as Vancouver, the persuasive approach was used with a view to convincing employers to pay their employees a decent wage, higher than the statutory minimum wage, and other benefits.⁹⁸ In Ottawa, however, the line followed was similar to that adopted in the United States, with the aim of having a municipal by-law adopted imposing a minimum wage for firms receiving public funds.⁹⁹

57. A campaign was also launched in New Zealand in 2012 for the establishment of a living wage to reduce inequality and poverty in the country.¹⁰⁰ An empirical study was conducted to define the level at which the living wage should be set, taking as a model a household unit of two adults and two children, and assuming that one of the adults works full time and the other part time.¹⁰¹

58. Alongside the notions of the minimum wage and the living wage, there is also the concept of fair wages. According to one study, 12 dimensions of the concept of fair wages have been identified, in particular: wages must be paid regularly and in full to the workers; they must comply with the minimum wage regulations and at least correspond to the living wage; they should not require excessive working hours; they must lead to a balanced wage structure, free of discrimination, and take into account different levels of education, skills and professional experience, and reward individual and collective

⁹³ On this subject, see Greater London Authority: *A fairer London: The 2012 living wage in London* (London, 2012), pp. 31–37.

⁹⁴ On the developments in Canada, see F. Aubry, *op. cit.*, pp. 25–43.

⁹⁵ Renamed Canada Without Poverty in 2009.

⁹⁶ The federal Government abolished the federal minimum wage in 1996, after keeping its rate unchanged for ten years. Since then, the minimum wage applicable to employees of companies under federal jurisdiction has been the minimum wage of the province in which they work.

⁹⁷ Federal Labour Standards Review Commission: *Fairness at work: Federal labour standards for the twenty-first century* (Ottawa, 2006), pp. 264–269.

⁹⁸ In 2012, 26 companies with more than 5,000 employees were certified as “living wage employers” in the Metro Vancouver district. See I. Ivanova and S. Klein: *Working for a living wage 2012: Making paid work meet basic family needs in Metro Vancouver, 2012 Update* (Vancouver, Canadian Centre for Policy Alternatives, April 2012), p. 6.

⁹⁹ Although this initiative has not yet come to fruition in Ottawa, an initial success was achieved in the city of New Westminster in 2010. See http://www.thestar.com/news/canada/2010/05/10/goar_living_wage_becomes_a_reality_but_not_here.html.

¹⁰⁰ See <http://www.livingwage.org.nz/>.

¹⁰¹ P. King and C. Waldegrave: *Report of an investigation into defining a living wage for New Zealand*, commissioned for the Living Wage Campaign, December 2012. This study found that a living wage was 18.40 New Zealand dollars (NZD) per hour; the legal minimum wage for adults has been NZD13.75 since 1 April 2013. In March 2013, the first employer in Auckland to commit to paying its employees a living wage declared its support for the campaign to get the city’s mayor to apply the living wage at the municipal level. See http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10871284.

performance.¹⁰² From this viewpoint, the minimum wage and living wage can be seen as components of the broader concept of fair wages, which shows the close relationship between Conventions Nos 131 and 95, and other ILO instruments on working conditions.

4. System and methods for determining minimum wages

59. Under Article 1 of Convention No. 131, each Member of the ILO which ratifies the Convention undertakes to establish a *system of minimum wages*, and Part III of Recommendation No. 135 provides details on the scope of application of this system. Furthermore, Article 4 of the Convention also requires the creation and/or maintenance of *machinery* adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered under Article 1 can be fixed and adjusted from time to time. Paragraph 6 of the Recommendation contains an illustrative list of the methods of fixing minimum wages that can be implemented, which are discussed in the next chapter.

60. Although Conventions Nos 26 and 99 and their accompanying Recommendations also use the term “minimum wage fixing machinery”, they do not refer to the establishment of a “system of minimum wages”. The two older Conventions only require States parties to create or maintain machinery whereby minimum rates of wage can be fixed, without requiring such rates to actually be set. These instruments do not therefore guarantee the right of workers to be paid a minimum wage in practice. *The obligation to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate is therefore a major innovation of Convention No. 131, as it involves not only the establishment of minimum wage fixing machinery, but also its implementation to ensure that workers receive the social protection that they need.*

61. The essential elements of a minimum wage system, as advocated by Convention No. 131, are as follows: (i) as broad a scope of application as possible; (ii) full consultation with the social partners, on an equal footing, in the design and operation of the minimum wage system and, where appropriate, their direct participation in the system; (iii) the inclusion in the elements to be taken into account of both the needs of workers and their families and economic factors in determining the levels of minimum wages; (iv) the periodic adjustment of minimum wage rates to reflect changes in the cost of living and other economic conditions; and (v) the implementation of appropriate measures to ensure the effective application of all provisions relating to minimum wages.

Section 2. Objectives of Convention No. 131 and Recommendation No. 135

62. The Preamble of Convention No. 131 states that it was desirable, at the time of its preparation, to adopt a new instrument complementing the existing Conventions and providing protection for wage earners against unduly low wages. Recommendation No. 135 specifies the objectives of fixing minimum wages, which should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families (Paragraph 1), and should have as their

¹⁰² D. Vaughan-Whitehead: *Fair wages: Strengthening corporate social responsibility* (Cheltenham, United Kingdom/Northampton, Massachusetts, United States, Edward Elgar, 2010), pp. 66–67.

fundamental purpose to give wage earners necessary social protection as regards minimum permissible levels of wages (Paragraph 2).¹⁰³ The need to pursue this objective was felt because it appeared that, despite global economic growth, the quality of life of workers had hardly improved, especially in developing countries where poverty was acute.¹⁰⁴ It was therefore decided to make a concerted effort to adapt existing instruments to this reality so as to create an effective anti-poverty tool. Thus, the main objective of minimum wage fixing is “reducing poverty by establishing a generally applicable lower limit under which wages are not permitted to fall. The fixing of such general minimum wages normally is associated with the view that all workers, as a matter of right, ought to receive protection against unacceptably low wages.”¹⁰⁵

63. However, the 1970 instruments are part of a more comprehensive approach in which the minimum wage fixing machinery is seen as one element of a policy aimed not only at overcoming poverty, but also at increasing the general level of wages and promoting rapid growth and the equitable distribution of national income. The overall policy must, for example, ensure consistency between the level of the minimum wage and social benefits for the most destitute, so as not to discourage employment.¹⁰⁶ In addition, where the minimum wage benefits individual employees, it has to be used in conjunction with a policy of income transfers to families.¹⁰⁷

64. Even if it is not explicitly stated, combating unfair competition is another objective of Convention No. 131 and Recommendation No. 135 which, in this sense, follow the philosophy of the older instruments.¹⁰⁸ The preparatory work for Convention No. 26 had already emphasized that the regulation of minimum wages is primarily intended, first, to avoid the payment of unduly low wages, and secondly, to eliminate unfair competition between employers with regard to wages, while noting the positive effect it can have on maintaining social peace.¹⁰⁹ In addition, Recommendation No. 30 calls for measures to be taken to ensure that wages are not paid at less than the minimum rates which have been fixed to safeguard employers against the possibility of unfair competition (Part A(IV)). Indeed, letting the free market determine wages without any constraint would inevitably lead to downward pressure on them¹¹⁰ and give employers an unfair advantage in relation to production costs.¹¹¹ ***Convention No. 131 is, therefore, based***

¹⁰³ These two Paragraphs were reversed in the proposed Conclusions for the first Conference discussion. The Working Party set up by the Committee on Minimum Wage proposed to adopt the order which appears in the final text of the Recommendation on the grounds that it was more logical to begin by mentioning the general point concerning the place of minimum wage fixing as one element of social policy and to end with the more particular point concerning the basic purpose of minimum wage fixing. See ILC: *Record of Proceedings*, 53rd Session, Geneva, 1969, p. 682, para. 47.

¹⁰⁴ A. Marinakis: *The role of ILO in the development of minimum wages* (ILO, 2008), p. 14.

¹⁰⁵ G. Starr: “Minimum wage fixing: International experience with alternative roles”, in *International Labour Review* (1981, Vol. 120, No. 5, Sep.–Oct.), p. 554.

¹⁰⁶ ILO: *The minimum wage: Catalyst for social dialogue or economic policy instrument?*, GB.291/ESP/5(&Corr.), para. 14.

¹⁰⁷ ILO: *Global Wage Report 2008–09: Minimum wages and collective bargaining: Towards policy coherence* (Geneva, 2009), p. 53.

¹⁰⁸ ILO: *General Survey of 1992*, para. 59.

¹⁰⁹ ILC: *Minimum wage fixing machinery*, discussion of methods of minimum wage fixing (third item on the agenda, report and draft questionnaire), Tenth Session (Geneva, 1927), pp. 11–15.

¹¹⁰ G. Starr: *Minimum wage-fixing: An international review of practices and problems* (Geneva, ILO, 1982), p. 22.

¹¹¹ W. Cunningham: *Minimum wages and social policy: Lessons from developing countries* (Washington, DC, Word Bank, 2007), p. 9.

also on the idea that it is necessary to protect wages, which are generally the only means of subsistence of workers, from the effects of market competition, and to prevent a race to the bottom. By the same token, its implementation helps to ensure conditions of fair competition between employers.

65. Minimum wage fixing has also had other functions assigned to it, in addition to its core objectives. Minimum wages are used to reduce wage inequality, especially between men and women. Minimum wage policy is also an instrument of employment policy, including through the establishment of differentiated minimum wage rates for young workers as part of a policy of promoting youth employment. In some countries, the minimum wage acts as a social floor and a benchmark for determining the amounts of certain social benefits. Although the pursuit of these various goals may be entirely legitimate, it is nonetheless desirable not to assign too many goals, which may even be contradictory, to minimum wage policy.¹¹²

66. Finally, it should also be noted that this is a matter of debate for employers' and workers' organizations. Commenting on whether minimum wages are the most appropriate mechanisms or policies to address concerns about income inequality or poverty, the International Organisation of Employers (IOE) expresses the view that minimum wages, like all policies, have winners and losers that warrant the need to assess carefully whether they achieve the intended objectives and to anticipate the unintended consequences that can spring from them and, therefore, minimum wages should not be promoted as a singular policy response. The IOE considers that from a policy perspective, rather than considering minimum wages as the best way to tackle the challenge of low wages, efforts should be made to help enhance productivity. The IOE also considers that this is particularly important because minimum wages could have repercussions, such as leading to decreased labour market experience, diminished on-the-job training and skills acquisitions, decreased motivation for education attainment, reduced productivity and a vicious cycle of wage-push inflation; and that a minimum wage is generally not felt by employers' organizations to be supportive of sustainable enterprise creation and growth, especially if it is set too high. The IOE concludes that the social welfare system, rather than minimum wage legislation, should be used to address social security and poverty issues, as wage policy could become too blunt an instrument with spillover effects if it is not properly managed.

67. On the other hand, the position of the International Trade Union Confederation (ITUC) is that there is no trade-off between the level of a minimum wage and economic development, levels of productivity or employment and that recent research shows that there is no conclusive evidence of any negative correlation between an increase in the minimum wage and the level of employment. The ITUC also maintains that, in fact, there is overwhelming empirical evidence that setting a minimum wage floor has a positive impact on the level of productivity as the most unproductive and exploitive enterprises are no longer allowed to maintain business while paying poor wages. The ITUC considers that a minimum wage floor creates the conditions for fair conditions of work as it protects against a downward spiral on wages.

¹¹² ILO: *The minimum wage: Catalyst for social dialogue or economic policy instrument?*, GB.291/ESP/5(&Corr.), para. 19.

Conclusion

68. The concept of the minimum wage can be defined as the minimum amount of remuneration that an employer is required to pay wage earners for the work performed during a given period, which cannot be reduced by collective agreement or an individual contract. While Convention No. 131 does not contain a specific definition of the minimum wage, and does not enumerate its components, the Committee observes that national legislation shows great variety in this regard. Although only the basic wage is taken into account in certain countries, others also include wage supplements such as commissions or productivity bonuses. The issue of whether benefits in kind are to be taken into account is particularly delicate in view of the difficulty of assessing objectively the value of such benefits. In general, if the minimum wage is really to offer social protection to workers and their families, it is necessary to ensure that only benefits in kind that respond to their needs are included among the components of the minimum wage, that a reasonable value is attributed to them and that they are only taken into account of up to a certain level.

69. The Committee also notes that Convention No. 131 does not enumerate the type of needs that minimum wages should satisfy. It has recalled that in several countries campaigns have been launched for a living wage which should enable workers not only to satisfy their basic needs, such as food and housing, but also to participate in social and cultural life.

70. The Committee has also highlighted the principal characteristic that distinguishes Convention No. 131 from earlier instruments on the subject: the obligation to establish a minimum wages system. Such a system has to cover the greatest possible number of workers and be established and implemented in full consultation with the social partners, and even with their direct participation. Minimum wage rates have to be fixed taking into account the needs of workers and their families, as well as economic factors, and must be adjusted from time to time to take into account fluctuations in the cost of living and the economic situation. Finally, appropriate measures must be taken to ensure effective compliance with minimum wages.

71. *With regard to the objectives of the minimum wages policy, Recommendation No. 135 provides that minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families, and that the fundamental purpose of minimum wage fixing should be to give wage earners necessary social protection as regards minimum permissible levels of wages. Moreover, the Committee has emphasized that minimum wage fixing also contributes to establishing rules of the game that are equal for everyone. Finally, at the national level, minimum wages are used in certain cases to achieve objectives other than the reduction of income inequalities.* The Committee observes that the extent to which minimum wages are able to achieve these different objectives is a matter of debate, and it notes the divergent opinions expressed on this issue by the IOE and the ITUC, respectively.

Chapter II

The scope of minimum wage systems

Section 1. Scope of application of Convention No. 131

72. As the Committee has already noted, the extension of the scope of application of Convention No. 131 in relation to earlier instruments is one of its main features and one way in which it marks notable progress in worker protection. Convention No. 26 applies to workers employed in certain of the trades or parts of trades (in particular in home-working trades) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low (Article 1(1)). Convention No. 99 applies to workers employed in agricultural undertakings and related occupations (Article 1(1)). However, States which ratify Convention No. 131 undertake to “establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate” (Article 1(1)). It is for the competent authority in each country to determine, in agreement or after full consultation with the representative organizations of employers and workers concerned, where such exist, the groups of wage earners to be covered (Article 1(2)).

73. According to the conclusions of the 1967 Meeting of Experts, it was made particularly clear that, in order for minimum wage regulations to achieve their fundamental objective, it was essential that they cover all workers. They believed that the obligation to establish minimum rates covering all categories of workers, in consultation with representatives of employers’ and workers’ organizations, should be considered mandatory, subject only to justified modifications dictated by the needs of economic development and adopted according to the same procedure.¹ The conclusions proposed by the Office for the purposes of the first Conference discussion consisted of two distinct points: first, that each ILO Member ratifying the Convention should undertake to establish a system of minimum wages covering all categories of wage earners; and second, that the competent authority in each country could exclude from coverage categories of wage earners whose terms of employment were such that coverage would be inappropriate.²

¹ ILO: *Meeting of Experts on Minimum Wage Fixing and Related Problems, with Special Reference to Developing Countries: Report*, MEMW/1967/D.8, Geneva, 1967, paras 102–103. Government replies to the questionnaire prepared by the Office as part of the preparatory work for Convention No. 131 and Recommendation No. 135 also show that most governments were in favour of the principle of general application of the minimum wage system, subject to the exceptions that the competent authority could decide on after consultation with the representative organizations of employers and workers. See ILC: *Minimum wage fixing machinery and related problems, with special reference to developing countries*, Report VII(2), 53rd Session, Geneva, 1969, pp. 112–113, question 9.

² ILC: *Minimum wage fixing machinery and related problems, with special reference to developing countries*, op. cit., p. 119, points 3 and 4(1).

74. In response to the report of the Working Party set up to examine the proposed conclusions, the Conference Committee on Minimum Wage replaced the term “categories” with “groups” of wage earners and decided to combine the two points of the Office text and deal with the matter of coverage in terms of groups of wage earners to be covered rather than exclusion from coverage.³ The text adopted by the Committee therefore stipulated that “[e]ach Member of the International Labour Organisation which ratifies the Convention should undertake to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate. The competent authority in each country should, in agreement or after full consultation with the representative organisations of employers and workers concerned, where such exist, determine the groups of wage earners to be covered”.⁴

75. Therefore, a minimum wage system established under Convention No. 131 may not necessarily cover all workers. In accordance with Article 1(3), each Member which ratifies the Convention may exclude groups of wage earners, on condition that these groups are listed in the first report on the application of the Convention, giving the reasons for not covering them. In subsequent reports, the Member concerned has to state the position of its law and practice in respect of the groups not covered, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such groups.⁵ The text of that paragraph is almost identical to that proposed by the Office for the first Conference discussion.⁶

76. In this regard, Paragraph 4 of Recommendation No. 135 provides that the number and groups of wage earners not covered by the minimum wage system should be kept to a minimum. This principle was already set out in the proposed conclusions examined during the first Conference discussion, which envisaged that “[e]xclusions from the

³ ILC: *Record of Proceedings*, 53rd Session, Geneva, 1969, p. 681.

⁴ *ibid.*, p. 685, point 3. During the second discussion, the Worker members proposed the deletion of the words “whose terms of employment are such that coverage would be appropriate” so as to ensure, as a matter of principle, that all wage earners were covered by minimum wage fixing machinery (ILC: *Record of Proceedings*, 54th Session, Geneva, 1970, p. 379). Some Government members supported the amendment because the possible exclusion of groups of workers from coverage would not eradicate poverty. Other Government members opposed the amendment because of the potential for conflicts with existing systems. They pointed out that, if adopted, the amendment would prevent some governments from ratifying the Convention. The Employer Vice-Chairperson expressed the view that coverage of all workers, including those already in receipt of adequate wages fixed by means of collective bargaining, would involve a heavy burden and complications for many developing countries, and that adoption of the amendment would greatly reduce the flexibility of the instrument. The amendment was finally not retained.

⁵ The conclusions of the 1967 Meeting of Experts were more specific in that regard. The experts considered that the international legislation to be adopted should contain a statement of the criteria or the circumstances to which reference could be made to limit the scope of the Convention on the grounds of the requirements of economic development. They also called for governments to be obliged to list, in their first report, the categories of workers excluded from the regulations and the categories for which minimum rates had not yet been fixed, together with the reasons for that situation. According to the experts, the governments should indicate in subsequent reports how the situation had developed and, where appropriate, the reasons for continuing any exclusions, re-examine periodically the exclusions permitted and attach to their reports the text of observations made on this subject by employers’ and workers’ organizations. See ILO: *Meeting of experts: Report*, op. cit., para. 104.

⁶ During the second discussion, an amendment was proposed by the Government member of *Australia*, seconded by the Government member of *Nigeria*, to delete paragraph 3, the wording of which, it was suggested, was inappropriate in view of the revised wording of paragraphs 1 and 2 of Article 1 as adopted by the Conference in 1969. In reply to a question as to what use would be made of the information called for in this paragraph, it was explained on behalf of the Office that the information would be communicated in the first place to the Committee of Experts, and then, as appropriate, to future Conference Committees on the Application of Conventions and Recommendations, so that future Conferences would have before them information about the extent of coverage of minimum wage systems and the reasons for not extending the coverage to certain groups of workers. In the light of this explanation, the amendment was withdrawn. See ILC: *Record of Proceedings*, 1970, op. cit., p. 379.

system of minimum wages in pursuance [of Article 1(3) of the Convention] should be kept to a minimum”.⁷

Section 2. Groups of wage earners not covered by national minimum wage systems

77. The Committee examines below the law and practice of member States in relation to the various requirements set out in the Convention regarding the possible exclusion of certain groups of wage earners from the coverage of minimum wage systems.

1. Exclusions mentioned in first reports on the application of the Convention

78. Of the 52 States that have ratified Convention No. 131, 19 indicated in their first report on its application that they excluded certain categories of workers from its application. The exclusions mentioned in the reports are as follows:

- agricultural workers: *Plurinational State of Bolivia*,⁸ *Guyana* (in zones not controlled by the State), *Lebanon*, *Syrian Arab Republic*,⁹ *Yemen* (only non-permanent workers);
- domestic workers: *Plurinational State of Bolivia*, *Chile*,¹⁰ *Egypt*, *France*,¹¹ *Guyana*, *Lebanon*, *Uruguay*, *Yemen*, *Zambia*;
- public service: *Chile*, *Guatemala*,¹² *Japan*,¹³ *Lebanon*;¹⁴

⁷ ILC: Report VII(2), 53rd Session, 1969, op. cit., p. 121, point 18. During the first Conference discussion, the Working Party set up by the Committee on Minimum Wage proposed a substantially reworded text. The version recommended by the Working Party was based on the last sentence of point 3, as adopted by the Committee, regarding the coverage of the system of minimum wages. The Government member of Belarus then proposed that the Working Party's text be replaced by another providing that the competent authority should keep to a minimum the number of wage earners not covered by the minimum wage fixing system. The proposal was adopted by the Committee, despite the opposition of the Employer members, who considered that it ran counter to the ILO principle of promoting free collective bargaining. See ILC: *Record of Proceedings*, 1969, op. cit., p. 683. During the second discussion, the Government member of India suggested that the word “number” be replaced with “groups” of wage earners, as that was the word used in the text of the Convention and because of the inadequate statistics available, especially in developing countries. The Worker members and some Government members opposed the amendment on the grounds that keeping the number of groups not covered to a minimum might be quite a different matter from keeping the number of workers not covered to a minimum, since a single group (agricultural workers, for example) could contain very large numbers of workers. The Committee finally adopted a compromise solution, which is contained in the final text of the Recommendation and which provides that the number and the groups of wage earners not covered should be kept to a minimum. See ILO: *Record of Proceedings*, 1970, op. cit., p. 382.

⁸ The Government indicated that the minimum wage did not apply in the “rural sector” because of the special structure of farms in the country.

⁹ The Government indicated that agricultural workers were nevertheless covered by Act No. 134 of 1959 on agricultural work.

¹⁰ According to the Government, the pay of domestic workers was set by agreement between the parties, but remuneration in cash had to be equivalent to 75 per cent of the minimum wage.

¹¹ The Government indicated in its first report that the national minimum wage (SMIG) did not apply to caretakers and domestic workers, for whom it had proved to be impossible, because of the very special conditions in which they worked, to establish a direct link between presence and hours actually worked and, consequently, to determine the number of hours to be taken into account in calculating wages. The Government nevertheless referred to the existence of regional and local collective agreements setting minimum wages that were usually higher than the SMIG.

¹² The Government referred to workers in the service of the State or its institutions whose pay was determined in the budget. It nevertheless added that, in accordance with the Labour Code, the budget should be adjusted in such a way that the workers concerned were not paid less than the minimum wage.

- non-industrial sector: *Nepal*; ¹⁵
- family businesses: *Lebanon*;
- small enterprises: *Portugal* (undertakings employing up to five workers);
- elderly workers: *Chile* (over 65);
- intermittent workers: *Republic of Korea*;
- workers on probation: *Republic of Korea*;
- apprentices and trainees: *Chile* (apprentices), *Republic of Korea* (workers engaged in vocational training);
- workers with disabilities: *Chile, Republic of Korea, Netherlands*. ¹⁶

79. In addition, two countries referred to possible exemptions for economic reasons. The Government of the *Netherlands* indicated in its first report the possibility of exempting a sector, a group of enterprises, or an enterprise from the obligation to pay the minimum wage for economic reasons. The Government of *Portugal* reported that an employer could be exempted from the increase in the minimum wage if the increase entailed an overall rise in costs of over 10 per cent. However, the wage paid could not be less than the previously applicable minimum wage.

80. The Government of *Australia* indicated that most workers who were not covered by an award establishing a minimum wage were not unionized or had not sought to be covered by the existing system. In its first report, the Government of *Sri Lanka* listed the sectors of activity in which a wage board or remuneration tribunal had been established. It simply stated that all the groups for which it had been deemed appropriate to do so were covered by the minimum wage, without specifying which groups of workers were not covered or for what reasons. Lastly, according to the first reports submitted by their respective Governments, financial institutions were exempted from minimum wage legislation in *Swaziland* and workers employed for periods of less than one month were not covered by the Labour Code in *Yemen*.

81. ***The Committee notes that the main groups of wage earners excluded from coverage according to first reports on the application of the Convention are agricultural and domestic workers.*** Even though several States have extended their national legislation to these workers, particularly in the case of domestic workers, since ratifying the Convention, the Committee notes that these groups of wage earners continue to be excluded or are subject to a specific minimum wage system providing for rates that are often lower than those of other categories of workers. Public sector employees, as the Committee emphasizes below, are not necessarily excluded from all minimum wage systems. They are often excluded from labour legislation because they come under a system of administrative law which very frequently includes the establishment of pay scales.

¹³ According to the Government, national and local public servants were not covered by the minimum wage system because their wages were set by law.

¹⁴ The decree on minimum wages applied to workers covered by the Labour Code, which did not include employees in government and municipal services who did not have the status of public servants. The Government added that a special law would cover such employees.

¹⁵ When the Convention was ratified, the minimum wage applied only to factory workers in 13 major industrial zones. The Government considered that, in the socio-economic context, it was not feasible to cover other categories of workers.

¹⁶ The Government referred to the possibility of establishing a wage lower than the minimum wage for an individual worker because of his or her disability.

82. It has to be noted that, in most cases, governments have not specified the reasons why they were unable to extend their minimum wage system to certain groups of workers. Even fewer governments indicated in their first report that the groups of wage earners covered had been determined in agreement with representative organizations of the employers and workers concerned, or at least after fully consulting them, as required by the Convention. Finally, the Committee will return at the end of this chapter to the need to regularly review exclusions established at the time of ratification.

2. Exclusions currently in force

Agricultural workers

83. In Pakistan,¹⁷ agricultural workers are excluded from the 1961 Minimum Wage Order. In *Lebanon*,¹⁸ agricultural undertakings that are not connected to trade or industry are excluded from the scope of the Labour Code in and are to be covered by special legislation. In Bangladesh,¹⁹ workers employed on farms that usually employ fewer than ten wage earners are excluded. Some agricultural workers are also excluded from minimum wage legislation in the United States²⁰ and *Yemen*.²¹ This is also the case in several provinces in Canada, namely Alberta,²² Manitoba,²³ Ontario²⁴ and Saskatchewan.²⁵ The General Labour Act of the *Plurinational State of Bolivia*²⁶ and its implementing regulations both exclude agricultural workers from their scope of application. According to the information provided by the Government on the application of Convention No. 131, sugar cane and cotton workers are not excluded from the minimum wage system and efforts are being made to expand its coverage to rubber, forestry and chestnut plantation workers. In its most recent comment, the Committee noted Act No. 3274 of 9 December 2005 on salaried work in Brazilian nut plantations, under which remuneration may, in no case, be lower than the national minimum wage rate. The Committee, however, considered that it remained unclear whether rubber and forestry workers are still excluded from the minimum wage.

The public sector

84. In some member States, the public sector is excluded, in whole or in part, from the general labour legislation, and consequently from its provisions on minimum wage fixing. The categories excluded vary from country to country. Such exclusions exist in

¹⁷ (2) s. 2(9)(iii).

¹⁸ (1) s. 7(2). Draft legislation on agricultural workers provides, nonetheless, that they benefit from a minimum wage under the same conditions as workers covered by the Labour Code.

¹⁹ (2) s. 1(4)(n).

²⁰ (1) s. 13(a)(6). This provision concerns the federal minimum wage.

²¹ (1) s. 3(2)(j).

²² (2) s. 2(3)–(4). According to the information provided by the Government, this exclusion is related to the seasonal nature of the activities concerned and their dependence on the weather. The Government nevertheless adds that the maintenance of this exclusion could be re-examined. On the exclusion of certain agricultural workers from the labour legislation of several Canadian provinces, see Canada – CEACR, Convention No. 26, observation, 2008.

²³ (8) s. 3(1.1).

²⁴ (21) s. 2(2). Some of the agricultural workers covered by this provision are nevertheless covered by a specific minimum wage system: (21) s. 25.

²⁵ (25) s. 2-3.

²⁶ (2) s. 1; (3) s. 1. See also *Plurinational State of Bolivia* – CEACR, Convention No. 131, observation, 2013.

Burkina Faso,²⁷ *Cameroon*,²⁸ *Central African Republic*,²⁹ *Egypt*,³⁰ *Gambia*,³¹ *Madagascar*,³² *Oman*,³³ *Spain*,³⁴ *Thailand*³⁵ and *Timor-Leste*.³⁶

85. The fact that these workers are not covered by labour legislation does not, however, necessarily mean that no minimum wage system applies to them. Often, the remuneration of public officials or, in broader terms, public sector workers, is governed by administrative law, including the establishment of pay scales. In *Costa Rica*,³⁷ for example, there are two distinct minimum wage fixing bodies: the National Wage Council fixes the minimum wages applicable in the private sector, and a wage bargaining committee has been established for the public sector. In *Ecuador*,³⁸ the Labour Code provides for the establishment of a minimum wage for workers in the private sector, while designating the authority responsible for determining the remuneration of salaried employees in the public service. The Labour Code of *Lithuania*³⁹ expressly provides that the State and other municipal and state institutions may regulate employment relations in their respective areas of competence, but may not place the workers concerned in a less favourable situation than that established by the Labour Code and other labour laws. The issue that therefore arises is not the total exclusion of these workers from any minimum wage fixing machinery, but the possible absence of consultation with the social partners, and particularly, as far as the public service is concerned, of representative organizations of the workers concerned.⁴⁰

Young workers and apprentices

86. In *Lebanon*,⁴¹ the minimum wage legislation applies to workers who have reached the age of 20, while in the Bahamas⁴² it does not apply to children or young persons. In *Burkina Faso*,⁴³ apprentices are excluded from the guaranteed interoccupational

²⁷ (1) s. 3.

²⁸ (1) s. 1(3).

²⁹ (1) s. 2.

³⁰ (1) s. 4.

³¹ (1) s. 3(2).

³² (2) s. 1(2).

³³ (1) s. 2(1).

³⁴ (2) s. 1(3)(a).

³⁵ (1) s. 4.

³⁶ (1) s. 2(2). The same applies in Botswana: (1) s. 2; Jordan: (1) s. 3A; Lao People's Democratic Republic: (1) s. 6; and Senegal: (1) s. L.2.

³⁷ (3) s. 2; (7) s. 1.

³⁸ (2) ss 117(2)–(3), and 118(4).

³⁹ (2) s. 4(2). The Act on the basic pay of politicians, judges, state officials and public servants was adopted in 2007.

⁴⁰ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1B), International Labour Conference. On this subject, see the Committee's most recent General Survey, *Collective bargaining in the public service: A way forward*, 102nd Session, 2013.

⁴¹ (2) s. 1(2). The Committee noted with interest that, under the new draft Labour Code, the minimum wage will be applicable to all men and women workers who have reached 18 years of age. See *Lebanon* – CEACR, Convention No. 131, direct request, 2009.

⁴² (2) s. 3(2)(b).

⁴³ (5) ss 1 and 2.

minimum wage, while in *Chile*⁴⁴ and Ireland⁴⁵ apprentices are excluded from the national minimum wage. In China (Hong Kong Special Administrative Region),⁴⁶ apprentices are not covered by the Minimum Wage Ordinance, and in Trinidad and Tobago⁴⁷ they are also excluded from the relevant legislation. In *Zambia*,⁴⁸ apprentices in the commercial sector do not benefit from the minimum wage for the sector. Young workers are frequently only paid a fraction of the minimum wage applicable to adult workers,⁴⁹ and similar provisions apply to apprentices and workers undergoing training. The Committee considers these issues in Chapter IV.

Workers employed in family businesses

87. In certain countries, for instance Bangladesh,⁵⁰ China (Hong Kong Special Administrative Region),⁵¹ Gambia,⁵² Islamic Republic of Iran,⁵³ *Lebanon*,⁵⁴ *Libya*,⁵⁵ Oman,⁵⁶ *Syrian Arab Republic*⁵⁷ and Timor-Leste,⁵⁸ family businesses are excluded from the scope of the labour legislation altogether and therefore workers employed in these businesses do not enjoy minimum wage coverage. In other countries, workers in family businesses are excluded from the scope of minimum wages even though they may be covered by the general labour legislation. For instance, in Belgium,⁵⁹ the interoccupational collective agreements fixing the general monthly guaranteed minimum wage do not apply to persons working in family businesses that usually employ only relatives, relations by marriage or wards, under the exclusive authority of their father, mother or guardian. In the United Kingdom,⁶⁰ members of the employer's family residing in the family home of the employer and participating in the running of the family business do not receive the minimum wage.

⁴⁴ (2) s. 81.

⁴⁵ (1) s. 5(b).

⁴⁶ (2) s. 7(2).

⁴⁷ (2) s. 8.

⁴⁸ (5) s. 3.

⁴⁹ In this respect, it is also important to take into account the legislation on the minimum age for admission to work or employment adopted in accordance with the Minimum Age Convention, 1973 (No. 138).

⁵⁰ (2) s. 1(4)(p). The section refers to businesses managed by their owners with the help of family members and without hiring other personnel.

⁵¹ (2) s. 7(2); (1) s. 4(2)(b). Members of the business owner's family who share his or her home are excluded.

⁵² (1) s. 3(2)(e) (workers living in their employer's house).

⁵³ According to the Government's report, workers in family workshops are excluded from the minimum wage.

⁵⁴ (1) s. 7(3). The Committee noted that the draft new Labour Code still excludes family businesses employing only family members. See *Lebanon* – CEACR, Convention No. 131, direct request, 2013.

⁵⁵ (1) s. 4. There are similar provisions in Jordan: (1) s. 3B.

⁵⁶ (1) s. 2(2) (workers who are the employer's dependants).

⁵⁷ (1) s. 5(a)(3) (workers supported by the employer).

⁵⁸ (1) s. 2(4). This provision refers to working relationships involving the employer's family members working in small family industrial or agricultural undertakings, the production of which is intended to meet the family's needs.

⁵⁹ (9) s. 2; (10) s. 2.

⁶⁰ (2) s. 2(3)–(4).

Wage earners in small enterprises

88. Exclusions may also be based on the size of the enterprise or its turnover. In *Nepal*,⁶¹ enterprises employing fewer than ten wage earners are excluded from the relevant legislation. In the Philippines,⁶² micro-enterprises in *barangays* are exempted from minimum wage legislation. According to the information provided by the Government, this exemption is intended to accelerate the country's economic development by encouraging the development of such enterprises, which help to integrate people working in the informal economy into the organized economy. However, it is planned to adopt non-binding wage recommendations for these enterprises. Finally, in the United States,⁶³ in businesses with an annual turnover of less than US\$500,000, only employees engaged in interstate commerce benefit from the federal minimum wage.

Domestic workers

89. Domestic workers continue to be excluded from the scope of the provisions of the labour legislation relating to the determination of minimum wages in a relatively large number of countries. These include Bangladesh,⁶⁴ Canada (New Brunswick),⁶⁵ *Egypt*,⁶⁶ Gambia,⁶⁷ Honduras,⁶⁸ *Japan*,⁶⁹ *Republic of Korea*,⁷⁰ Kuwait,⁷¹ *Lebanon*,⁷² Malaysia,⁷³ Oman,⁷⁴ *Syrian Arab Republic*⁷⁵ and Tunisia.⁷⁶ In China (Hong Kong

⁶¹ (1) s. 2(b). The law nevertheless applies to enterprises active in the industrial districts established by the Government, even if they employ fewer than ten wage earners.

⁶² (7) s. 8; (11). The *barangay* is the smallest administrative unit in the Philippines. The Committee requested the Government to take appropriate action to ensure that workers in such enterprises enjoy the coverage of binding and legally enforceable minimum wages established in accordance with the Convention. See Philippines – CEACR, Convention No. 99, direct request, 2013.

⁶³ (1) s. 3(s).

⁶⁴ (2) s. 1(4)(o).

⁶⁵ (12) s. 1. Under the Employment Standards Act, the term “employer” does not include a person having control or direction of or being responsible, directly or indirectly, for the employment of persons in or about his private home. In other provinces and territories, certain categories of domestic workers are not included in the scope of the minimum wage legislation.

⁶⁶ (1) s. 4.

⁶⁷ (1) s. 3(2)(d).

⁶⁸ (3) s. 48. The Minimum Wage Act provides that such workers shall be subject to a special system that has yet to be established. The only rule applicable is that the wages of domestic workers is supposed to comprise remuneration not only in cash but also in kind (food and housing); (2) s. 153.

⁶⁹ (3) s. 2(1).

⁷⁰ (3) s. 3(1). In its 2012 report on the application of Convention No. 131, the Government indicated that it was seeking ways, for instance by commissioning research, to protect domestic workers as well as various categories of workers who were not protected by the labour legislation. See *Republic of Korea* – CEACR, Convention No. 131, direct request, 2013.

⁷¹ (1) s. 5. In Jordan, domestic workers, cooks and other workers (gardeners, in particular) are also excluded from the minimum wage legislation: (1) s. 3C.

⁷² (1) s. 7(1). The draft new Labour Code still excludes domestic workers living in the employer's residence. The Committee nevertheless noted the bill of 2011 on decent work for domestic workers, which provides that wages agreed between the parties shall be fair, taking into account the nature of the work performed, and cannot be lower than the minimum wage set by the Minister of Labour. See *Lebanon* – CEACR, Convention No. 131, direct request, 2013.

⁷³ (5) s. 3.

⁷⁴ (1) s. 2(3).

⁷⁵ (1) s. 5(a)(4). A 2000 law had extended coverage to domestic workers, under section 159 of the 1959 Labour Code relating to the establishment of the minimum wage, but there is no such provision in the 2010 Labour Act.

Special Administrative Region),⁷⁷ domestic workers living in the employers' home free of charge are not covered by the Minimum Wage Ordinance, but a specific minimum wage applies to foreign domestic workers. Domestic workers are also implicitly excluded from the scope of the Labour Act in *Nepal*,⁷⁸ which only applies to workers employed in enterprises. In *Guyana*,⁷⁹ whenever the Labour Minister deems it expedient that steps should be taken to regulate the wages paid in any occupation, he or she may appoint an advisory committee to investigate the conditions of employment in that occupation and to make recommendations as to the minimum rates of wages which should be payable. The term "occupation" is defined as including agriculture, business, commerce, industry and trade, and does not therefore include domestic workers. In Viet Nam,⁸⁰ persons performing housework in the form of piecework are not covered by the Labour Code.

90. In the United Kingdom,⁸¹ minimum wage legislation does not apply to workers who live in the home of the employer and are not family members, but are treated as such, in particular as regards the provision of accommodation, meals and leisure. Domestic workers have been denied national minimum wage coverage on the basis of this provision. In Peru,⁸² the Domestic Workers Act provides that the amount of the remuneration shall be set by agreement between the parties. It is simply specified that employers must provide workers with food and accommodation in accordance with their financial possibilities and that such benefits are not part of the remuneration. In *El Salvador*,⁸³ although the Constitution and the Labour Code establish the right of all workers to a minimum wage, domestic workers are governed by a specific title of the Labour Code which only indicates that, unless otherwise provided, the remuneration of such workers shall include, in addition to the wages agreed, accommodation and food.

91. The Committee, however, welcomes the progress achieved in a number of countries in enhancing minimum wage coverage for domestic workers. It has emphasized such progress in its comments on the Bahamas,⁸⁴ South Africa⁸⁵ and the

Moreover, it would appear that in 2010 the Government adopted a law aimed at strengthening the rights of domestic workers. See *Syrian Arab Republic* – CEACR, Convention No. 131, direct request, 2013.

⁷⁶ (1) s. 1. The Labour Code applies to industrial, commercial and agricultural establishments and their subsidiaries, as well as to the liberal professions, artisanal establishments, cooperatives, civil societies, associations and groups of any kind.

⁷⁷ (2) s. 7(3).

⁷⁸ (1) Preamble and s. 2(b). However, a draft new Labour Act is being drawn up that could apply to domestic workers. See General Federation of Nepalese Trade Unions (GEFONT): *Isolated within the walls: A situation analysis of domestic workers in Nepal* (Kathmandu, 2011), p. 32. In addition, the Government of *Nepal* establishes minimum wages for its citizens employed as migrant domestic workers in other countries.

⁷⁹ (1) ss 2(1) and 7(1).

⁸⁰ (1) s. 179(2).

⁸¹ (2) s. 2(2)(a). See the rulings of the Employment Appeal Tribunal of 8–10 November 2011, *Julio & Others v. Jose & Others*, UKEAT/0553/10/DM, UKEAT/0596/10/DM, UKEAT/0597/10/DM, UKEAT/0070/11/DM and UKEAT/0071/11/DM. In its 2011 report on the national minimum wage, the Low Pay Commission emphasized the difficulties encountered by migrant workers hired as domestic workers who were refused the minimum wage under those legal provisions and the way in which they were construed. See *Low Pay Commission: Report 2011: National minimum wage*, paras 4.6–4.7.

⁸² (5) s. 5.

⁸³ (1) s. 38(2); (2) ss 144 and 78. Preliminary draft legislation was drawn up to amend this provision and establish the right of domestic workers not living at the employer's home to receive the minimum urban wage, but it was not adopted. See Council of Ministers for Women's Affairs of Central America: *El trabajo doméstico remunerado en El Salvador: Realidades y desafíos* (San Salvador, 2010), p. 52.

⁸⁴ Bahamas – CEACR, Convention No. 26, direct request, 2004.

Bolivarian Republic of Venezuela.⁸⁶ In addition, in the *Plurinational State of Bolivia*,⁸⁷ under the terms of the 2003 Domestic Work Act, homeworkers may not be paid less than the minimum wage. In *Chile*,⁸⁸ the national minimum wage has applied since 2011 to domestic workers. In *Uruguay*,⁸⁹ a bargaining group was created in 2008 for domestic workers and wage councils now cover all employees in the country. In *Zambia*,⁹⁰ the Minimum Wages and Conditions of Employment (Domestic Workers) Order was first adopted in 2011. In the Philippines,⁹¹ domestic workers are not covered by the general minimum wage legislation, but in January 2013 the country adopted the Domestic Workers Act, which establishes a minimum wage for them. The Labour Code of *Morocco*⁹² provides that the employment and working conditions of household employees shall be set out in a special law. The Government approved a bill on domestic work in May 2013, which provides, inter alia, that wages shall be agreed between the parties, but that the cash component thereof may not be less than 50 per cent of the minimum wage applicable in industry and trade. Finally, according to the information available, the Government of Pakistan⁹³ plans to amend its legislation, with a view to extending minimum wage coverage to workers in the informal economy, including homeworkers and domestic workers, where there is an employment relationship.

Other categories of workers excluded

92. In Belgium,⁹⁴ the national minimum wage does not apply to workers who are normally engaged for periods of less than one month. In Canada (Quebec),⁹⁵ exclusions include employees paid entirely on commission who work in a commercial activity outside the establishment, and whose working hours cannot be verified. In Indonesia,⁹⁶ only workers with less than one year's service are eligible for the minimum wage. Under the Labour Code of *Morocco*,⁹⁷ relations between employers and wage earners, and working conditions in purely traditional sectors are to be determined by special legislation. In addition, certain professional categories of employers, set forth by decree following consultation with the most representative employers' and workers' organizations, may be excluded from the scope of application of the Labour Code. In the

⁸⁵ South Africa – CEACR, Convention No. 26, direct request, 2005.

⁸⁶ Bolivarian Republic of Venezuela – CEACR, Convention No. 26, observation, 2008.

⁸⁷ (4) s. 14.

⁸⁸ *Chile* – CEACR, Convention No. 131, direct request, 2012.

⁸⁹ *Uruguay* – CEACR, Convention No. 131, direct request, 2013.

⁹⁰ (7) and (8). See ILO: *Zambia enacts new domestic work legislation* (Geneva, Developments in law and practice, 1/2011).

⁹¹ (4) s. 4(c); (6) s. 24.

⁹² (1) s. 4.

⁹³ *Labour Policy 2010*, para. 30.

⁹⁴ (9) s. 2; (10) s. 2.

⁹⁵ (23) s. 2(4).

⁹⁶ (3) s. 14(2). In the Lao People's Democratic Republic, according to the report communicated by the Government, only unskilled and inexperienced workers regularly working 26 days per month, six days per week or eight hours per day are covered by the minimum wage.

⁹⁷ (1) s. 4. The following conditions have to be met for a category of employers to be excluded by decree: the employer must be an individual; the number of persons assisting the employer may not exceed five; and the revenue of the employer may not exceed five times the amount excluded from general income tax.

Netherlands,⁹⁸ according to the information provided by the Government, flexiworkers, such as homeworkers, are entitled to the minimum wage only under certain conditions. In Viet Nam,⁹⁹ people engaged in subcontracting work at home are not covered by the Labour Code, including its provisions on minimum wage fixing. In the *Syrian Arab Republic*,¹⁰⁰ exclusions from the scope of application of the Labour Law include employees of charitable organizations, occasional workers, or part-time workers working fewer than two hours per day. In *Chile*,¹⁰¹ minimum wage provisions do not apply to employment contracts for mentally handicapped workers, while in India¹⁰² the competent government may exclude workers with disabilities from certain provisions of the Minimum Wages Act.

93. Moreover, when minimum wages are fixed by sector of economic activity, and there is no national minimum wage acting as a safety net for workers not covered by a sectoral minimum wage, many workers may find themselves excluded from any form of protection. In Saint Vincent and the Grenadines,¹⁰³ for example, only a few branches in the private sector are covered by wages orders. In Mozambique, minimum wages are fixed by sector of activity, but there is no minimum wage for domestic workers. In Cyprus,¹⁰⁴ where minimum wages are fixed through collective agreements or orders covering a specific sector, there is no minimum wage for the agricultural sector, and the wages paid in that sector, which chiefly employs migrant workers, are significantly lower than those applied in other branches of activity. In Cambodia,¹⁰⁵ only the textile, garment and shoe assembly sectors are subject to minimum wage regulations. According to the information provided by the Government, it seems unlikely that the wage-fixing system will be extended to other economic sectors.

94. The question of the exclusion of certain groups of workers also arises when minimum wages are fixed by means of collective agreements, especially in the absence of a mechanism for extending collective agreements, or when an existing mechanism is not implemented. Thus, when workers do not benefit from minimum wage coverage merely because they are not members of a trade union that is a party to the collective agreement covering the sector of activity concerned, the minimum wage cannot play its full role as a safety net. For this reason, the global coverage rate of collective agreements fixing minimum wages can be used to assess whether the number and groups of wage earners who are not covered are kept to a minimum, as provided for in Paragraph 4 of Recommendation No. 135.

⁹⁸ To be covered, these workers must work a minimum of four hours per week on average and be employed for a period of not less than three months. See *Netherlands* – CEACR, Convention No. 131, direct request, 2008.

⁹⁹ (1) s. 185(2).

¹⁰⁰ (1) s. 5(a)(5)–(7).

¹⁰¹ (3) s. 16.

¹⁰² (1) s. 26(1).

¹⁰³ (2)–(8). The following categories are covered: agricultural workers, domestic workers, hotel workers, industrial workers, security workers, workers in offices of professionals and in commerce.

¹⁰⁴ European Parliament, Directorate-General for Internal Policies: *Social and employment situation in Cyprus*, 2012, p. 20.

¹⁰⁵ (3).

Conclusion

95. *The Committee is bound to observe that many workers are still excluded from minimum wage systems, including in industrialized countries. The Committee considers, however, that reflection at the national level on the scope of minimum wages should take due account of their importance, as recalled earlier, in efforts to extend social protection and combat poverty, and as a means of contributing to the establishment of a level playing field for all employers.* Seeking agreement, or, at a minimum, the full consultation with representative organizations of employers and workers to determine the scope of minimum wage provisions, as required under Article 1(2) of the Convention, is a prerequisite to the achievement of these objectives. The Committee has repeatedly emphasized the need to comply with this obligation.¹⁰⁶ It should be recalled, in this respect, that the United Nations Committee on Economic, Social and Cultural Rights has also on several occasions raised issues in its conclusions on matters pertaining to exclusion from minimum wage legislation.¹⁰⁷

96. Moreover, the Committee notes that the most vulnerable workers, including domestic workers, are also most frequently excluded from the protection of minimum wages. In a 1985 general observation on the application of Convention No. 131, the Committee expressed the hope that governments in countries where such protection did not yet exist would make every effort to extend to homeworkers and to domestic workers the protection afforded by a system of minimum wages.¹⁰⁸ The Committee also draws the attention of governments to the provisions of the recently adopted the Domestic Workers Convention, 2011 (No. 189), which requires measures to be taken to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex.¹⁰⁹

97. As the Committee stated in its 1992 General Survey on minimum wages (paragraph 86), States ratifying Convention No. 131 should take measures to broaden the coverage of their minimum wage fixing systems and thereby offer workers more adequate protection. The determination of the scope of application of minimum wages should in practice be a dynamic process closely involving the social partners. In this regard, the Committee recalls that, under Article 1(3) of Convention No. 131, any government listing in its first report on the application of the Convention any groups of wage earners not covered by the national minimum wage system is required to provide

¹⁰⁶ Bahamas – CEACR, Convention No. 26, direct request, 2004; *Plurinational State of Bolivia* – CEACR, Convention No. 131, observation, 2004; *Republic of Korea* – CEACR, Convention No. 131, direct request, 2004; Seychelles – CEACR, Convention No. 26, direct request, 2013.

¹⁰⁷ Argentina (E/C.12/ARG/CO/3, Dec. 2011, para. 15); Cyprus (E/C.12/CYP/CO/5, June 2009, para. 16); Cambodia (E/C.12/KHM/CO/1, June 2009, para. 23); *Republic of Korea* (E/C.12/KOR/CO/3, Dec. 2009, para. 16); *Morocco* (E/C.12/MAR/CO/3, Sep. 2006, para. 17); *Nepal* (E/C.12/NPL/CO/2, Jan. 2008, para. 20); Paraguay (E/C.12/PRY/CO/3, Jan. 2008, paras 12(e) and 23(g)); Philippines (E/C.12/PHL/CO/4, Dec. 2008, para. 22); *Sri Lanka* (E/C.12/LKA/CO/2-4, Dec. 2010, para. 19).

¹⁰⁸ ILC: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4A), General Report and observations concerning particular countries, 71st Session, Geneva, 1985.

¹⁰⁹ Convention No. 189, Art. 11. As indicated in an informal opinion prepared by the Office in July 2012 in response to a clarification request from the Government of Peru, “the Convention calls for measures to ensure minimum wage coverage for domestic workers without specifying however whether this should entail extending the national minimum wage to cover domestic workers or possibly fixing a separate minimum wage rate specifically for this occupational category There is nothing in the Convention that prevents national authorities from establishing differentiated minimum wage rates for domestic workers provided that the principle of equal remuneration for work of equal value is fully observed and particular attention is given to eliminating de facto as well as de jure discrimination, for example, by ensuring that domestic work is not undervalued due to gender stereotypes”; see also ILC: *Decent work for domestic workers*, Report IV(1), 99th Session, Geneva, 2010, paras 139–147; ILO: *Remuneration in domestic work*, Policy Briefs on Domestic Work, No. 1, Geneva, 2011.

information in subsequent reports on the protection of the wage earners concerned and any measures that it proposes to take to give effect to the Convention in respect of such groups. *The Committee therefore urges the governments concerned to consider, with all the required attention and in the context of genuine tripartite dialogue, the possibility of extending the scope of application of their minimum wage systems so that they cover the workers who are most in need of such protection and to shield employers from unfair competition through low wages.*

Chapter III

Minimum wage fixing machinery

98. In accordance with Article 4(1) of Convention No. 131 each Member which ratifies the Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered by the Convention can be fixed and adjusted from time to time. Paragraph 6 of Recommendation No. 135 provides that this minimum wage fixing machinery may take a variety of forms, such as the fixing of minimum wages by statute; decisions of the competent authority, with or without formal provision for taking account of recommendations of other bodies; decisions of wages boards or councils; industrial or labour courts or tribunals; or giving the force of law to provisions of collective agreements.

99. While the earlier Conventions and Recommendations do not contain equivalent provisions, the conclusions of the 1967 Meeting of Experts contained an enumeration of possible minimum wage fixing mechanisms, which was similar to that adopted in Recommendation No. 135. The meeting of experts also considered that the fixing of minimum wage rates by statute is a cumbersome procedure liable to be attended by lengthy delays, although the choice between different types of machinery depends very much on the country's traditions and political structure. In general, they emphasized that, whatever the form of the machinery, it is essential to ensure that employers and workers can express their views.¹ The question of the choice of the various types of machinery was scarcely discussed by the International Labour Conference and the text of Paragraph 6 of Recommendation No. 135 is thus very close to that originally proposed by the Office.²

100. The Committee will devote Chapter V to the measures taken at the national level to ensure consultation with representatives of employers' and workers' organizations or their direct participation in minimum wage fixing machinery. In the present chapter, the Committee will confine itself to describing the machinery in place for all member States, without commenting on the effectiveness and authenticity of the consultations held with the social partners or their participation in bodies such as wage councils or labour advisory committees. However, bearing in mind the crucial importance of the role assigned by Convention No. 131 and Recommendation No. 135 to employers' and workers' organizations in fixing minimum wages, the Committee has classified the methods used at the national level into four categories based on the degree of participation of the social partners. The law and practice is examined, first, in States in

¹ Report of the Meeting of Experts, 1967, op. cit., paras 73–75.

² During the second discussion, the Government member of Belarus proposed an amendment providing that minimum wage fixing could be effected either by legislation or by a decision of a competent government body. The Worker Vice-Chairperson observed, however, that many workers came from countries where minimum wages were fixed by other means, such as by wage councils or by collective agreements with the force of law. The Employer Vice-Chairperson said that the amendment was not in accordance with the social and economic systems of most countries. In the light of these arguments, the Government member of Belarus withdrew his amendment. See ILC: *Record of Proceedings* No. 17, 54th Session, Geneva, 1970, para. 56.

which minimum wages are fixed by the public authorities without the requirement of prior consultation of employers' and workers' organizations. The second category consists of numerous States in which minimum wages are fixed by the government after consultation with the social partners. The Committee then reviews States in which minimum wages are fixed in a tripartite process, and, finally, those in which they are fixed by collective bargaining. These categories are, of course, not entirely watertight and some States use a combination of several methods. In many countries where a national minimum wage is fixed by government decision, collective agreements can set higher minimum wages for specific categories of workers. In contrast, in some States where collective bargaining is the principal method of fixing minimum wages, ministerial orders can sometimes set the minimum wage applicable to certain categories of workers regarded as vulnerable.

Section 1. Minimum wage fixed by the public authorities without consultation with the social partners

101. Only a minority of member States have established minimum wage fixing machinery that does not involve compulsory consultation with employers' and workers' organizations. This is the case of the *Plurinational State of Bolivia*,³ where the Ministry of Labour is responsible for fixing minimum wages. In *Kyrgyzstan*,⁴ the minimum wage is also fixed by the Government in the context of the law determining the State budget, and no mechanism is envisaged for consulting the social partners on this subject. In *Uzbekistan*,⁵ the minimum wage is fixed by presidential decree without any procedure for consultation with the social partners. In *Barbados*,⁶ a specific procedure, by ministerial order and without the involvement of a wages council, has been established to fix the minimum wage of domestic workers.

102. In *Brazil*,⁷ the Federal Government set up a quadripartite commission in 2005 to strengthen the minimum wage. However, according to the Government, this commission ceased meeting the following year because of difficulties in reaching agreement on minimum wage policy. The minimum wage for 2011 was set by an act providing that annual adjustments from 2012 to 2015 would be made by decree, based on criteria set out in the act. The Government must submit to Parliament, by 31 December 2015, a bill on the policy for adjusting the minimum wage over the period 2016–19. Elsewhere, in *Canada (Saskatchewan)*,⁸ the minimum wage was previously fixed on the recommendation of a minimum wage commission. However, the *Employment Act, 2013*, removed the reference to the commission and provides that the Lieutenant Governor in Council may make regulations prescribing the amount of the minimum wage or the manner in which it is to be determined.

³ (2) s. 52; (3) s. 46. See also *Plurinational State of Bolivia* – CEACR, Convention No. 131, observation, 2013. This is also the case in *Israel* where the minimum wage is fixed by law: (1) s. 1; (2).

⁴ (2) s. 2. See also *Kyrgyzstan* – CEACR, Convention No. 131, direct request, 2014.

⁵ (1) s. 155.

⁶ (4) s. 3A; (8). However, the minimum wage of these workers has not been adjusted since 1982.

⁷ (4) ss 2–5. The quadripartite commission comprised representatives of federal authorities, employers' and workers' organizations, organizations of retired employees and could also include a representative of federate states, the federal district and municipalities.

⁸ (25) s. 2.99(g).

103. In the *Netherlands*,⁹ legislation provides for the indexation of the minimum wage to the average increase in contractual wages in the public and private sectors. The Government may, however, derogate unilaterally from this rule if there is reason to believe that the increase in the minimum wage resulting from the application of the indexation rule would have a negative effect on employment or if the growth of social security schemes is such that a significant increase in contributions or taxes is necessary. In that case, the Government simply has to submit its proposal to that effect to Parliament.

104. The situation is less clear in *Armenia*.¹⁰ The Labour Code provides that the minimum wage shall be determined by law. In its last report on the application of Convention No. 131, the Government referred to a tripartite committee operating under the terms of the national collective agreement of 2009, dealing with wage-related issues, although without clearly indicating whether it is a standing advisory body mandated to regularly review minimum wage rates and make recommendations on their adjustment. It should be noted that the Decent Work Country Programme for *Armenia* covering the period 2007–11 included among its objectives the modernization of the minimum wage fixing system in the framework of a tripartite process, and in compliance with Convention No. 131. In *Azerbaijan*,¹¹ under the Labour Code, the national minimum wage is determined by the competent executive body, with no reference to prior consultations with representative employers' and workers' organizations. Finally, in *Georgia*,¹² minimum wages for the public and private sectors are fixed by presidential decree, and no information is available on any consultation with employers' and workers' organizations. However, according to information provided by the Government in 2009, a tripartite roundtable was held with the participation of an ILO delegation, government representatives and representatives of the Georgian Trade Union Confederation (GTUC) and the Georgian Employers' Association (GEA), which led to the creation of a tripartite social partnership commission, the statutes of which were adopted in 2010. This commission is intended to allow the social partners to exchange views on social and labour issues.

Section 2. Minimum wages fixed by the public authorities after consultation with the social partners

105. The fixing of minimum wages by a public authority, government or otherwise, after consultation with the social partners, is by far the method most frequently chosen by member States. In certain countries, the procedure involves the participation of a wages board or council, similar to those established in *Australia* and the United Kingdom at the end of the nineteenth and beginning of the twentieth century. Wages councils are generally established by sector or by occupational category and, in some cases, are only set up if the responsible minister considers, in line with the spirit of Convention No. 26 that no other appropriate wage-fixing machinery exists. Thus, in

⁹ (1) s. 14.

¹⁰ (2) s. 179. See also *Armenia* – CEACR, Convention No. 131, direct request, 2012.

¹¹ (2) s. 155(6). See also *Azerbaijan* – CEACR, Convention No. 131, direct request, 2012. However, a general collective agreement is concluded annually between the Council of Ministers, the Azerbaijan Trade Union Confederation and the Azerbaijan Employers' Confederation, in which the parties undertake to make consecutive increases in the minimum wage to bring it up in stages to the minimum subsistence level.

¹² (3); (4). See also *Georgia* – CEACR, Convention No. 122, direct request, 2012.

Kenya,¹³ and the *United Republic of Tanzania*,¹⁴ wages councils are required to investigate the remuneration and conditions of employment in the sector concerned, consider the views of interested parties and make recommendations to the Minister of Labour on minimum wages and conditions of employment.

106. Similarly, the legislation in Barbados,¹⁵ *Swaziland*,¹⁶ and Viet Nam¹⁷ provides for the fixing of the minimum wage by order adopted on the recommendation of a wages council while in Bangladesh,¹⁸ Maldives¹⁹ and in *Sri Lanka*,²⁰ wage boards are

¹³ (2) ss 43–47. The wages council consists of a chairperson, employers' and workers' representatives and independent members. Before issuing a wages order, the Minister has to publish a notice in the *Gazette* indicating his intention to do so and invite comments on the draft order. If objections are received, the Minister shall refer them to the wages council for consideration. The Minister may also seek the opinion of the National Labour Board. After considering any report by these two bodies, the Minister may publish the wages order, which must then be laid before the National Assembly. In *Guyana*, the Minister of Labour may make an order prescribing the minimum wage rates for a given occupation on the recommendation of an advisory committee. Moreover, if the Minister considers that no adequate machinery exists for the effective regulation of the remuneration of certain workers, and that it is expedient to do so, having regard to the remuneration existing among such workers, he may establish a wages council consisting of employers' and workers' representatives and also independent members. The Minister may then adopt a wages order for the workers concerned, on the recommendation of the wages council, according to a procedure similar to that followed in *Kenya*. In specific cases, the Minister may also adopt a wages order without first setting up a wages council; see (1) ss 7–8; (2) ss 3–6 and 10–11, and First Schedule.

¹⁴ (2) ss 35–39. The board consists of a chairperson, an employers' representative and a workers' representative. If the Minister does not accept a recommendation of the wage board, he can refer it back for reconsideration, indicating the matters of disagreement. If the Minister does not make a wage order within 60 days after receipt of the board's report, or decides not to make an order based on the board's recommendations, the board's report and recommendations have to be forwarded to the National Assembly within 14 days, if applicable, attaching the reasons for not making an order. In Zanzibar, the President may adopt a wages order on the recommendation of the Wages Advisory Board, an independent tripartite body. On its own initiative, the Board may also make recommendations to the President concerning minimum wages; see (4) ss 91–97. A similar procedure is followed in Saint Vincent and the Grenadines, where wages councils are composed of independent members as well as representatives of the employers and workers concerned; see (1) s. 10 and First Schedule.

¹⁵ (2) ss 3, 11 and First Schedule. According to the Government, such orders were adopted in the past for the textile and sugar industries. However, due to the development of collective bargaining in those industries, it no longer seemed necessary to maintain minimum wage orders in their case. Only the wages council for commerce is currently operational. According to the Government, a bill to replace the 1951 Wages Councils Act is currently under review. It envisages the establishment of a tripartite council, which would submit to the responsible minister recommendations for a national minimum wage or minimum wages applicable to specific groups of workers.

¹⁶ (3) ss 6, 11, 13. The wages council may submit to the Deputy Prime Minister its proposals on the minimum wage rate that should be applied, based on its investigations, after publishing a notice of its intention in the *Gazette* and another newspaper, considering any written representations made and, where appropriate, amending its proposals. The Deputy Prime Minister may give effect to the proposals of the wages council by making a wages regulation order, making any amendments which, in his opinion, do not substantially modify the proposal received. He may also send the proposal back to the wages council with any amendments. The 1964 Wages Act also provides for another procedure with the participation of a Wages Advisory Board. However, according to the Government, this Board is inactive. Under the third applicable procedure, if the Deputy Prime Minister considers that a collective agreement covers the majority of employers and workers in an industry, he may adopt a wages regulation order in accordance with the terms of that agreement, as though it had been an order made at the proposal of a wages council.

¹⁷ (1) ss 91–93. The Council is a government advisory body, which includes members representing the Ministry of Labour, the Viet Nam General Confederation of Labour and the employers' representative organization.

¹⁸ (2) ss 138–140. According to the Government, the Board is normally chaired by a judge and consists of an independent member, usually a university professor, an employers' representative and a workers' representative. In addition, in exercising its minimum wage fixing functions, the Board also includes an employers' representative from the industry concerned and a representative of the workers engaged in that industry.

¹⁹ (1) ss 56(a) and 59(a).

²⁰ (1) ss 8, 9, 20(1), 28, 29, 33. The wages boards are chaired by the Commissioner of Labour and composed of an equal number of employers' and workers' representatives, and a maximum of three other members nominated by the Minister. If a wages board cannot be established for any trade, or if it fails to reach a decision within one

responsible for advising the competent minister on fixing a minimum wage. Advisory bodies on wages have also been established in *Antigua and Barbuda*,²¹ *Cyprus*,²² *El Salvador*,²³ *Iraq*,²⁴ *Malaysia*,²⁵ *Mauritius*,²⁶ *Namibia*,²⁷ *Nepal*²⁸ and *Panama*.²⁹

107. In other countries, consultation with employers' and workers' organizations takes place within a tripartite advisory body whose mandate is not confined to wage matters. The legislation in several European States provides for the intervention of the Economic and Social Council to fix the minimum wage. This is the case, for example, in *Hungary*,³⁰ *Slovenia*,³¹ *the former Yugoslav Republic of Macedonia*³² and *Ukraine*.³³ Similar bodies exist in other countries, such as *Albania*,³⁴ *Bulgaria*,³⁵ *Latvia*,³⁶

year of its establishment, the Minister of Labour may authorize the Commissioner of Labour to determine minimum rates for the trade concerned.

²¹ (1) ss C21(1), (3) and (10). The Minimum Wage Advisory Committee is specially appointed by the Minister to investigate the conditions of work, the extent of unemployment, the cost of living and the general economic conditions. A similar procedure is applied for fixing minimum wages by occupation; see (1) s. C22(1)–(3). See also *Trinidad and Tobago*: (1) ss 6–11, 13.

²² (2) ss 3–4. The Government fixes minimum wage rates for specific occupations in which employees are characterized by weak bargaining power based on recommendations of the tripartite Labour Advisory Board.

²³ (2) ss 149, 152, 155–157. The tripartite National Minimum Wage Board submits draft decrees to the executive determining minimum wage rates. If the executive approves the decree, it promulgates it and publishes it in the *Official Gazette*.

²⁴ (1) s. 46. The Minimum Wage Advisory Committee makes recommendations on the level of the minimum wage for an unskilled worker, with the decision then being taken by the Council of Ministers. A draft new Labour Code is currently under examination and provides for a similar procedure. See *Iraq* – CEACR, Convention No. 131, direct requests, 2010 and 2013.

²⁵ (4) ss 3–5, 21–25. The National Wages Consultative Council is composed of public officers, members representing employers and workers, and other members appointed by the responsible minister. Before making recommendations, it has to hold public consultations, collect and analyse data and conduct research on wages and socio-economic indicators.

²⁶ (1) ss 90–93. The tripartite National Remuneration Board includes in its composition also independent members.

²⁷ (1) ss 13 and 105–114. The Labour Act provides for the fixing of minimum wages by wage order, after consideration of the recommendations made by the Wages Commission. The Commission was established in 2012 for the first time since the adoption of the Labour Act, and an order on minimum wages for domestic workers should be adopted in 2014.

²⁸ (1) s. 21; (2) ss 9–10. The tripartite Minimum Remuneration Committee can seek expert opinions with a view to the determination of minimum wages. If it is not possible to form the Committee, or if the Committee is not able to make a recommendation, the Government can prescribe the applicable minimum wage rates.

²⁹ (2) s. 174. See M.F. Canessa Montejo: *El fortalecimiento institucional del tripartismo en Panama*, Regional programme for the promotion of dialogue and social cohesion in Latin America, ILO, pp. 14–15. In 2009, the National Minimum Wage Committee comprised two representatives of the National Council for Private Enterprise (CONEP), a representative of the Panamanian Chamber of Construction and three representatives of the National Council of Organized Workers (CONATO). When fixing the minimum wages for 2012, agreement could not be reached in the tripartite committee. Consequently, minimum wages were fixed by the Government: (3) preamble.

³⁰ (1) s. 153.

³¹ (2) s. 6; (3). See also *Slovenia* – CEACR, Convention No. 131, direct request, 2012.

³² (3) s. 4.

³³ (3) s. 10. Section 219(3) of the new draft Labour Code, in the April 2012 version, provides that the minimum wage is fixed by Parliament on the recommendation of the Cabinet of Ministers and after consultation with the tripartite National Economic and Social Council. See also *Ukraine* – CEACR, Convention No. 131, direct request, 2013.

³⁴ (2) ss 111(1) and 200. The minimum wage is set by the Council of Ministers after consultations with the National Labour Council. See also *Albania* – CEACR, Convention No. 131, direct request, 2008.

Lithuania,³⁷ *Malta*,³⁸ *Republic of Moldova*,³⁹ *Montenegro*,⁴⁰ *Portugal*,⁴¹ *Romania*,⁴² *Russian Federation*,⁴³ *Samoa*,⁴⁴ *Timor-Leste*⁴⁵ and *Uruguay*.⁴⁶

108. In some States, in the case of differences of views between the government and the wages council, the latter may also be invited to reconsider its recommendations. However, if the wages council maintains its position and the disagreement persists, the wages council has the last word and the government is bound to set the minimum wage in line with the council's conclusions. For this reason, the Committee has classified procedures of this type in the category of tripartite minimum wage fixing machinery, as examined below.

109. A more complex structure may be established in some States where minimum wages are fixed not only at the national level, but also at the regional and even local level. In Indonesia,⁴⁷ for example, there is a National Wage Council responsible for submitting recommendations to the Government for the formulation of wage policies and the development of a national wage system. In addition, provincial wages councils must submit recommendations to the governor of the province concerned with a view to fixing provincial minimum wages, district and city-based minimum wages, and also sector-based minimum wages. Moreover, district and city wage councils make recommendations on minimum wage rates for the district or city concerned. These three institutions are tripartite and also include experts and representatives of universities.

110. In India,⁴⁸ the Minimum Wages Act provides for two alternative methods for the fixing of minimum wages at the central government or state levels. The appropriate government can first appoint committees and subcommittees to hold inquiries and advise it. It must also establish an advisory board to coordinate the work of the committees and

³⁵ (2) ss 3 and 244. The national minimum wage is fixed by decree after consultation with the National Tripartite Cooperation Council and its Commission on Incomes and Living Standards.

³⁶ (2) s. 61; (3) s. 3.1.7; (5). The minimum monthly wage is fixed by the Council of Ministers after consultations with the National Tripartite Cooperation Council.

³⁷ (2) ss 45 and 187(1). The minimum hourly pay and the minimum monthly wage are determined on the recommendation of the Tripartite Council.

³⁸ (2) ss 3–4. The national minimum wage is fixed by government order on the recommendation of the Employment Relations Board.

³⁹ (1) s. 132(1); (3) s. 3(1) and (4). The national minimum wage is determined by government decision after consultation with the trade unions and the employers' representative body. According to the Government's report, this consultation takes place in the National Commission on Consultation and Collective Bargaining.

⁴⁰ (2) s. 80(3); (3) ss 4 and 13. The amount of the minimum wage is determined by the Government on the proposal of the Social Council.

⁴¹ (2) s. 273(1); (3) ss 1–3; (5). The amount of the minimum guaranteed monthly wage is set by legislative decree after consultations with the Standing Committee for Social Dialogue.

⁴² (2) s. 164(1); (3) s. 78(a). The minimum national wage is fixed by government decision after consultation with workers' and employers' organizations in the National Tripartite Council for Social Dialogue.

⁴³ (2) s. 133; (4) ss 1–5. The federal minimum wage is set by law and after consultations with the Russian Tripartite Commission for the Regulation of Social and Labour Relations.

⁴⁴ (1) ss 4, 32. The minimum wages are fixed by order after consultation of the Tripartite National Forum.

⁴⁵ (1) s. 100. The National Labour Council proposes the amount of the national minimum wage to the Government every two years.

⁴⁶ (2) ss 8 and 10(A). The Government sets and adjusts the national minimum wage after consulting the Higher Tripartite Council.

⁴⁷ (2) ss 89 and 98; (4) ss 1–2, 6–7, 21–24 and 38–41.

⁴⁸ (1) ss 5–9.

subcommittees and advise the Government generally on the matter of fixing or revising minimum wage rates.⁴⁹ The Government can also publish its proposals concerning the minimum wage in the *Official Gazette* in order to allow people likely to be affected to comment on the proposals. All the committees, subcommittees and advisory boards have to be composed of persons representing employers and workers in the occupation concerned, as well as independent members.

111. In *Japan*,⁵⁰ minimum wages are mainly set in the form of regional minimum wages. Under the normal procedure, they are set by the Director of the Prefectural Labour Bureau after consulting with the Prefectural Minimum Wages Council which must carry out its own inquiry. Each council is composed of an equal number of members representing respectively the workers, employers and the public interest. If the competent authority considers it difficult to comply with the opinion of the council, it shall request the council to carry out a new inquiry, stating the reasons. Moreover, since the revision of the Minimum Wage Act in 2007, special minimum wages may be established for specific industries or occupations at the request of the interested parties. They have to be higher than the regional minimum wage and are fixed by a similar procedure. In addition, there is a Central Minimum Wages Council which may make non-binding recommendations to regional councils, in which it recommends changes to minimum wage rates for the different categories of prefecture.

112. In Canada, minimum wages are determined at the provincial level. In the provinces of New Brunswick⁵¹ and Manitoba,⁵² the minimum wage is fixed by the Government on the recommendation of a tripartite minimum wage board. In Manitoba,⁵³ in the construction industry, minimum wages are fixed by the Lieutenant Governor in Council following recommendations of wages boards composed of two workers' representatives and two employers' representatives, chaired by a person who is impartial with respect to the interests of employers and workers. In Nova Scotia,⁵⁴ the Governor in Council fixes the minimum wage on the recommendation of the Minimum Wage Review Committee. In Newfoundland and Labrador,⁵⁵ the Lieutenant Governor in Council establishes minimum wage rates at least every two years while a minimum wage advisory committee was established in August 2012. In Prince Edward Island⁵⁶ and Yukon,⁵⁷ the Employment Standards Board, composed of workers' and employers' representatives, fixes the minimum wage and submits it to provincial authorities for approval.

113. A two-tier procedure has been established in *Guatemala*,⁵⁸ where joint minimum wage committees, chaired by a labour inspector, are established in each department and economic zone determined by the Government. These committees submit their

⁴⁹ A central advisory board also has to be established to coordinate the work of the various advisory boards.

⁵⁰ (3) ss 9–19 and 22. The Minimum Wages Act provides that regional minimum wages may be fixed by the Ministry of Health, Labour and Welfare. However, in practice, they have all been fixed at the prefectural level. Special minimum wages are normally the subject of discussions each year in the prefectural minimum wage council after the regional minimum wage has been set.

⁵¹ (12) ss 9–10 and 46–49.

⁵² (7) ss 7–8; (8) s. 11.

⁵³ (9) ss 4–6.

⁵⁴ (16) ss 50–51.

⁵⁵ (26) ss 27 and 30.

⁵⁶ (6) ss 4–5.

⁵⁷ (30) ss 18 and 94.

⁵⁸ (2) ss 105–106, 110–113.

recommendations concerning the minimum wage rates for their zone to the tripartite National Wages Committee. The Committee must then submit an opinion to the Government, harmonizing as far as possible the various branches and economic zones. This opinion must also be forwarded to the Monetary Council of the Bank of Guatemala and to the Guatemalan Social Security Institute, so that they can make written comments. The Government then fixes the minimum wage for each industry, enterprise or economic zone by means of orders issued by the Ministry of Labour and Social Welfare.

114. In *France*,⁵⁹ consultation with the social partners with a view to fixing the minimum interoccupational growth wage (SMIC) takes place at two levels. The SMIC is fixed by decree, after consultation with the National Collective Bargaining Commission, which includes representatives of the Government, employers' and workers' organizations, as well as the President of the Social Section of the Council of State. Before reaching a decision, the National Collective Bargaining Commission receives the report prepared by a group of experts mandated each year with reporting on trends in the SMIC. A decree of February 2013 introduced the requirement for this expert group to hear the representatives designated by the member organizations of the National Collective Bargaining Commission and to annex their opinions to its report.

115. In several countries in French-speaking Africa, the interoccupational guaranteed minimum wage (SMIG) is set by the government on the recommendation of a commission in which employers' and workers' organizations are represented. This is the case in *Benin*,⁶⁰ *Cameroon*,⁶¹ *Gabon*,⁶² *Mali*,⁶³ *Mauritania*⁶⁴ and *Niger*.⁶⁵ Similar procedures exist for the determination of the minimum guaranteed interoccupational wage in *Burkina Faso*,⁶⁶ *Central African Republic*,⁶⁷ *Senegal*⁶⁸ and *Togo*.⁶⁹

⁵⁹ (1) ss L.2271-1(5), L.2271-2, L.3231-4 to L.3231-8, R.2272-1 and R.3231-1; (2) s. 24; (3) s. 3, as amended by Decree No. 2013-123 of 7 Feb. 2013 concerning methods of revising the minimum growth wage. As explained in Chapter VI below, in 1970, the SMIC replaced the SMIG. The SMIG was adjusted only on the basis of the evolution of the consumer price index (CPI) whereas the adjustment of the SMIC also takes into account the evolution of the average wage in order to increase the purchasing power of the minimum wage.

⁶⁰ (1) ss 210, 286–287. The SMIG is fixed by decree of the Council of Ministers based on the reasoned opinion of the National Labour Council, which is tripartite and also includes experts appointed by ministerial order.

⁶¹ (1) ss 62(1), 118 and 119. The SMIG is fixed by decree after hearing the opinion of the National Labour Advisory Commission. The Commission is chaired by the Minister of Labour or his or her representative, and is composed of an equal number of workers' and employers' representatives. The National Assembly, the Economic and Social Council, and the Supreme Court are each represented by a regular member and a substitute member. Experts and technical advisers with consultative status may also be appointed by order of the Minister of Labour depending on the agenda of each session.

⁶² (1) ss 149, 254; (2). The SMIG is fixed by decree, although, the tripartite National Commission for Wage Studies submits a reasoned opinion to the government wages commission.

⁶³ (1) ss L.96 and L.283. The SMIG is fixed by decree after hearing the opinion of the Higher Wages Council. Chaired by the minister or his or her representative, the Council is composed of six workers' representatives and six employers' representatives with the right to vote, two members of the National Assembly, the National Director of Labour, the directors of the National Labour and Employment Office and the Social Welfare Institute, as well as representatives of the ministers concerned with consultative status.

⁶⁴ (1) ss 195 and 416–418. A decree adopted following the opinion of the National Labour, Employment and Social Security Council fixes the rate of the SMIG. Chaired by the Minister of Labour or his or her representative, the Council is composed of representatives of representative employers' and workers' organizations.

⁶⁵ (2) ss 163 and 259. The SMIG is fixed by decree following the opinion of the Labour and Employment Advisory Committee. Chaired by the Minister of Labour or his or her representative, it is composed of an equal number of representatives of the most representative national workers' and employers' organizations.

⁶⁶ (1) ss 187(1) and 405.

⁶⁷ (1) ss 226(1), 337–339. Orders of the Minister of Labour issued following the opinion of the tripartite National Standing Labour Council fix the SMIG and the guaranteed minimum agricultural wage.

116. In the United Kingdom,⁷⁰ before fixing the minimum wage, the Secretary of State must consult the Low Pay Commission. This Commission consists of nine members, including the chairperson. Three of them have an academic background, three others have a trade union background and the last three have links with the world of employers. Before making recommendations, the Commission must consult employers' and workers' representative organizations. In South Africa,⁷¹ the tripartite Employment Conditions Commission advises the Minister of Labour on various matters, including the determination of the minimum wage in the sectors concerned. The Commission's advice takes into consideration the information gathered through research into the conditions of employment in the sector and area which will be affected by the sectoral determination. The Commission may also hold public hearings to allow members of the public to express their views on the subject.

117. In Switzerland,⁷² a special procedure applies when, in a branch of the economy or an occupation, the normal wages in the district, branch or occupation are the subject of persistent unfair practices and there is no collective agreement containing provisions on the minimum wage which could be extended to them. The competent authority may then, on the proposal of a tripartite committee, order the use of a model fixed-term employment contract with minimum wages differentiated by region and, where appropriate, by district, to combat or prevent abuse.

118. In a few countries, consultations with employers' and workers' organizations do not take place in a standing body. In *Australia*,⁷³ the Fair Work Commission (the Australian workplace relations tribunal) is responsible, in particular, for adopting "modern awards" which establish minimum wage rates by industry or occupation, and fix national minimum wages for workers subject to the national system of workplace relations who are not covered by a modern award, an enterprise agreement or a transitional instrument. Minimum wages are fixed by the Commission's Expert Panel. Following the annual wage review, the Panel decides on a research programme on the occasion of the annual wage review. The Expert Panel also holds public hearings in which the social partners participate. In China,⁷⁴ the administrative authorities handling labour and social security matters in the government of each province, autonomous region and municipality are responsible for drawing up a programme to set and adjust minimum wage rates, in consultation with the social partners in the relevant area. This programme is submitted to the Ministry of Labour and Social Security for approval while the Ministry invites the All-China Federation of Trade Unions (ACFTU) and the

⁶⁸ (1) ss L.109 and L.205(3). Nonetheless, the Government notes that in practice this procedure is no longer in use and minimum wages are fixed by collective agreements.

⁶⁹ (2) ss 121, 209–211; (4) ss 2 and 13. The SMIG is fixed by order of the Minister of Labour after consulting the National Labour Council, which is a subdivision of the National Council for Social Dialogue, a standing tripartite institution, the organization and functioning of which are fixed by decree of the Council of Ministers.

⁷⁰ (1) ss 1(3), 2 and 5–8. See Low Pay Commission, *National minimum wage: Report 2013*. Available at: <http://www.lowpay.gov.uk/>. A similar mechanism was put in place in the Hong Kong Special Administrative Region, China; (2) ss 11–12 and 16. See *Minimum Wage Commission: Report 2012*. Available at: http://www.mwc.org.hk/en/downloadable_materials/index.html.

⁷¹ (1) ss 55, 59 and 61.

⁷² (2) ss 360a and 360b.

⁷³ (1) ss 285, 289–291. Since the amendment of the Fair Work Act in 2012, the Minimum Wage Panel has been renamed the Expert Panel (due to the additional functions assigned to it) and Fair Work Australia was renamed the Fair Work Commission. Since 2010, all the federate states, apart from Western Australia, have transferred their powers relating to industrial relations to the central Government. For further information, see: <http://www.fwc.gov.au/>.

⁷⁴ (2) s. 8.

China Enterprise Confederation (CEC) to submit their comments. Consultations outside an institutionalized body are also conducted in Croatia,⁷⁵ Czech Republic,⁷⁶ Ireland,⁷⁷ and Spain.⁷⁸

119. In *Zambia*,⁷⁹ if the competent minister considers that no adequate provision exists for the regulation of minimum wages and conditions of employment for any group of workers, he or she may prescribe by statutory order the wage rates to be paid to those workers. If the group is represented by a trade union, the minister must consult the union before making a wages order. In *Chile*,⁸⁰ there is no institutionalized procedure for consultations with the social partners when fixing the minimum wage, which is set by legislation. However, according to information provided by the Government, a Tripartite Commission meets on the occasion of the annual review of the national minimum wage, with the participation of the most representative employers' and workers' organizations. In Jamaica,⁸¹ consultation with the social partners depends on the goodwill of the Government. Minimum wage rates are fixed by the Minister of Labour and Social Security, subject to approval by the House of Representatives, and after receiving an opinion from the Minimum Wage Advisory Commission.

120. In New Zealand,⁸² the fixing of minimum wages is the responsibility of the Governor-General, and the legislation does not prescribe consultation or participation of employers' and workers' organizations. In Luxembourg,⁸³ the minimum social wage is fixed by law and, for this purpose, the Government submits to the Chamber of Deputies every two years a report on trends in the general economic conditions and incomes accompanied, if necessary, by a bill to increase the minimum social wage, which is adapted to the weighted consumer price index (CPI). Finally, in the United States,⁸⁴ the federal minimum wage is fixed by legislation. As in the case of any legislative process,

⁷⁵ (2) s. 7.

⁷⁶ (2) ss 111(2) and 320.

⁷⁷ (1) ss 11–13. The national minimum wage is set by ministerial order and the social partners may participate in the process either by concluding a national economic agreement submitted to the minister for approval or through the consultations undertaken by the Labour Court with a view to formulating recommendations to the minister. However, the legislation also provides for the possibility of the minister fixing unilaterally the national minimum wage. In addition, the Industrial Relations Act 1946, as last amended in 2012, provides also for the establishment of sectoral minimum wages: (2) ss 27, 42, 42A, 42B, 42C.

⁷⁸ (2) s. 27.

⁷⁹ (2) s. 3. The Committee has, for many years, commented on the need to amend this legislation, which does not require consultation with employers' organizations before fixing minimum wages; see *Zambia* – CEACR, Convention No. 131, direct request, 2013.

⁸⁰ *Chile* – CEACR, Convention No. 131, direct request, 2012.

⁸¹ (1) ss 3–4A and Second Schedule. The Commission consists of three permanent members and may, if the Minister thinks necessary, include special members representing an equal number of employers' and workers' organizations who are not entitled to vote and are not entitled to make recommendations to the Minister or to sign the report of the Commission. See also Jamaica – CEACR, Convention No. 26, direct request, 2012.

⁸² (2) ss 4, 4A and 4B. According to information provided by the Government, a new consultation process was introduced in 2012, whereby the most representative organizations of employers (Business New Zealand) and of trade unions (New Zealand Council of Trade Unions) are invited to take part each year in a review of minimum wages, while more extensive consultations are organized every four years with the interested parties, and in particular with employers' groups and workers' representatives. See also New Zealand – CEACR, Convention No. 26, observation, 2003. See also Ministry of Business, Innovation and Employment: *Minimum wage review 2012*, pp. 20–21.

⁸³ (1) ss L.222-2 and L.222-3. In practice, according to the Government, trade unions and employers' organizations are invited to give their views in a consultation procedure on draft legislation to adjust the minimum social wage. See also Luxembourg – CEACR, Convention No. 26, direct request, 2013.

⁸⁴ (1) s. 6(a), (1), (c).

the Congress holds hearings to consider the views of interested parties, and the social partners can express their views in this procedural context. Many states also have minimum wage laws, which are established under the particular state's legal regime and entail different legal requirements. In cases where an employee is protected by both state and federal minimum wage laws, the employee is entitled to the higher minimum wage. Currently, 19 states and the District of Columbia have established a minimum wage rate that is higher than the federal minimum wage rate (for instance, California, Connecticut, Florida, Illinois, Michigan, Ohio).⁸⁵

Section 3. Minimum wages fixed on a tripartite basis

121. As the Committee has indicated above, some member States have established procedures involving the participation of the government and wages councils or equivalent bodies, leaving the decision-making authority to the latter in the case of disagreement between them and the government on the fixing of the minimum wages. In the *Republic of Korea*,⁸⁶ the Minimum Wage Council (MWC) is composed of nine employers' representatives, nine workers' representatives and nine representatives of the public interest. It can also include as special members up to three public officials from an administrative agency concerned, experts on economic and social issues and industrial relations. The Council meets each year at the request of the Minister and must submit a proposal on the minimum wage within 90 days. The Minister of Employment and Labour must then publish the proposal to allow employers' and workers' representatives an opportunity to raise any objections. In that case, and if the Minister considers the objection reasonable, he must ask the Council to meet again. In addition, if, on receiving the Council's proposal, the Minister considers that it would be difficult to fix a minimum wage based on the proposal, the Council is requested to deliberate on it again. If the Council decides, by a two-thirds majority, with two-thirds of its members being present, to maintain its initial proposal, the Minister has to fix the minimum wage in accordance with the proposal.

122. In *Costa Rica*,⁸⁷ minimum wages are determined by the National Wages Council, which must take into account surveys and studies carried out by its technical department and other competent bodies. It also has to organize a programme of hearings with representatives of state institutions, as well as private sector employers' and workers' organizations, to obtain their views in order to determine a satisfactory minimum wages policy. The Council then communicates its decision to the Ministry of Labour which may approve or refer the matter back to the Council with any observations it sees fit. In the latter case, if the Council upholds its decision, the Ministry cannot refuse its approval. An executive decree fixing the minimum wages is then published. Similarly, under the legislation of Honduras,⁸⁸ the tripartite National Minimum Wage Commission prepares a draft agreement fixing the minimum wage for a specific sector, which has to be

⁸⁵ More detailed information on the exact minimum wage rates by state can be found at: <http://www.dol.gov/whd/minwage/america.htm>.

⁸⁶ (3) ss 8–18; (4) s. 7–10. According to the Government, no request for additional deliberation has so far been made to the Minimum Wage Council.

⁸⁷ (3) ss 2, 4, 16–20; (4) ss 46, 49–51.

⁸⁸ (2) ss 383 and 386–388; (3) ss 15, 18–19 and 26–30. While the Government had unilaterally fixed minimum wages for many years in the absence of agreement in the Commission, a tripartite agreement was concluded in 2012 fixing the minimum wage rates applicable in 2012 and 2013 for various sectors.

published in the *Official Gazette* to allow the interested parties to express their views. The Commission then submits a report containing a draft agreement to the Government, which may approve it or refer it back to the Commission for reconsideration. The Commission then draws up the final agreement, which the Government cannot refuse to approve.

123. In Peru,⁸⁹ the National Council for Labour and Employment Promotion (CNTPE) is the tripartite body which participates in the regulation of minimum wages. Since 2007, it has had a technical committee on productivity and minimum wages, which is also tripartite. The committee has developed a periodic minimum wage adjustment mechanism, which has been approved by the Council in plenary. A General Labour Bill that is currently under examination provides for minimum wages to be fixed by the executive upon the proposal of the National Labour Council, and that an agreement concluded unanimously by the Council is binding.

124. In other countries, the legislation makes direct provision for the fixing of minimum wages by a tripartite body. In *Mexico*,⁹⁰ there are two types of minimum wages: general and occupational, with variations by geographical area. In both cases, minimum wages are fixed once a year by the Council of Representatives of the National Minimum Wages Council (CONASAMI). Each year, employers and workers have until the end of November to submit such studies as they consider appropriate. The CONASAMI technical department then submits to the Council of Representatives a report on its own studies and surveys and the studies submitted by the employers and workers. During December, the Council of Representatives adopts a resolution fixing minimum wages after studying all the documents submitted and giving reasons for its decision. The Chairperson of the Commission then orders the publication of the resolution in the *Official Journal*, not later than 31 December. In *Uruguay*,⁹¹ in addition to the national minimum wage, tripartite wages councils fix minimum wages for different branches. Their decisions can be appealed to the executive, unless they have been adopted unanimously. However, if the executive considers that the minimum wage set by a council is too low and the council does not rectify its decision appropriately, the executive may itself establish the applicable minimum wage.

125. In the Philippines,⁹² regional tripartite wages and productivity boards determine the minimum wage rates applicable to agricultural and non-agricultural employees in their respective regions. They have to hold hearings and public consultations and inform employers' and workers' organizations, the provincial and municipal authorities, and any other interested parties accordingly. The National Wages and Productivity Commission, also tripartite, prescribes rules and guidelines for the determination of appropriate minimum wages and reviews the wage levels fixed by the various regional boards to determine whether they are consistent with these guidelines and national development plans. Minimum wages are also fixed on a tripartite basis in Argentina,⁹³ Thailand⁹⁴ and Turkey.⁹⁵

⁸⁹ (1) s. 24; (2) s. 7(7.9); (3) s. 106(h); (4) ss 1 and 2(8). In 2012, the amount of the minimum wage was approved unanimously by the members of the CNTPE and was then published in the *Official Journal*: (13).

⁹⁰ (1) s. 123(A)(VI); (2) ss 91–96, 557(VIII), 562(V), 570–571; (4) ss 1–2 and 5.

⁹¹ (2) s. 11; (3) ss 5–6, 15 and 19. Wages councils, which had not been convened by the Government for many years, were reactivated in 2005 and have since held regular bargaining rounds. See *Uruguay – CEACR*, Convention No. 131, direct request, 2013. See also ILO: *Global Wage Report 2010–11: Wage policies in times of crisis*, Geneva, 2010, p. 63.

⁹² (2) ss 99 and 120–123; (5) Chapters II and III; (9).

⁹³ (3) ss 135–139; (5) s. 32; (4) s. 18. The National Council on Employment, Productivity and the Indexed Minimum Living Wage fixes periodically the amount of the indexed minimum living wage. The minimum wages

126. In Austria,⁹⁶ although collective bargaining is the principal method of fixing minimum wages, a tripartite institution – the Central Conciliation Office – may on a subsidiary basis establish minimum wage scales at the request of a group of workers with the legal capacity to conclude collective agreements. Such scales can only be fixed for groups of workers, including apprentices, in respect of whom a collective agreement has not been concluded as there is no employers’ association with the legal capacity to conclude agreements, or where a wage regulation has not followed the extension of a collective agreement. According to the Government, such scales have been instituted for seven occupational categories, including domestic workers.

127. In other countries, the legislation provides that minimum wages are fixed by the government if the competent tripartite body cannot reach agreement. In Colombia,⁹⁷ a Standing Consultative Committee for Consultation on Wage and Labour Policies fixes the minimum wage by consensus. If it does not reach consensus by 30 December on the amount of the minimum wage for the following year, it is set by the Government, taking into account the criteria set out by law. Whatever the procedure followed, the amount of the minimum wage is prescribed by decree. In *Ecuador*,⁹⁸ the State, through the National Wages Council (CONADES) – a tripartite technical body under the Ministry of Industrial Relations – fixes the single basic wage annually for workers in the private sector. If CONADES does not reach consensus, the Minister of Industrial Relations prescribes a percentage increase in the minimum wage equal to the forecast variation in the consumer price index. In addition, CONADES determines minimum wages in different branches on the recommendation of sectoral committees, which are also tripartite. These minimum wages are then subject to ministerial approval. As in the case of the single minimum basic wage, in the absence of consensus in CONADES on the minimum wage for a specific sector, the Minister takes the decision.

128. In *Nicaragua*,⁹⁹ minimum wages are also fixed by a tripartite body, the National Minimum Wage Commission. Chaired by a representative of the Ministry of Labour, the Commission includes representatives of the Ministry of Development, Industry and Trade, the Ministry of Finance, the Central Bank of Nicaragua, and a representative of each of the national trade union federations and confederations, and a representative of each employers’ organization with national representation. If the three parties do not reach agreement within 30 days of the commencement of the Commission’s work, the

of agricultural workers are fixed by the National Agrarian Labour Commission. The legislation also provides for the fixing of the minimum wages of different categories of domestic workers by the National Domestic Workers Labour Commission. However, as the Act on the special employment contract regime for domestic workers was adopted only in 2013, the tripartite commission has not yet been set up and the minimum wage is fixed by the Government, as envisaged in that act.

⁹⁴ (1) ss 78–79; (4) s. 28(3). The minimum wage – generally applicable since 2013 – is fixed by the Wages Committee, while the rates of remuneration of homeworkers are fixed by the Home Work Protection Committee.

⁹⁵ (2) s. 39; (5) ss 4–11. The single minimum wage is fixed at least every two years by the Minister of Labour and Social Security, through the Minimum Wage Fixing Board. The Board’s decisions are final and take effect from their publication in the *Official Gazette*.

⁹⁶ (1) ss 22, 26, 141 and 58(3)–(4). A similar procedure is envisaged in the Home Work Act: (3) ss 29 and 34–36.

⁹⁷ (3) ss 2(d) and 8. In 2011, consensus was achieved on the amount of the minimum wage for 2012, the first time in six years. However, consensus was not reached on fixing the minimum wage for 2013.

⁹⁸ (2) ss 117–118 and 122–124 ; (4) ss 1–3 and 16–18. CONADES failed to achieve consensus in the course of discussions on fixing the national minimum wage for 2013. Consequently, the Minister of Industrial Relations fixed the new amount. In the case of sectoral minimum wages for 2013, CONADES managed to reach consensus for 20 out of 22 branches of industry. See (6)–(7).

⁹⁹ (2) s. 85(2); (3) ss 4, 8–11.

decision fixing the minimum wage is valid if it is signed by only two of the parties. Furthermore, negotiations with a view to fixing minimum wages may not last more than two months. Beyond that time, if the parties have not reached agreement, minimum wages are determined by the Ministry of Labour. In Poland,¹⁰⁰ the minimum wage is determined by the Tripartite Commission for Social and Economic Affairs, based on a proposal by the Government. If the Commission does not reach consensus, the minimum wage is fixed directly by the Council of Ministers. In that case, the minimum wage may not be set at an amount less than that originally proposed by the Government to the Commission. In *Serbia*,¹⁰¹ the minimum wage is determined by the Social and Economic Council, an independent tripartite body. However, if it fails to take a decision within ten days of the start of the bargaining process, the amount of the minimum wage is fixed by the Government. In Jordan,¹⁰² decisions of the National Tripartite Labour Committee that are not reached unanimously are submitted to the Council of Ministers so that it can fix the minimum wage.

129. Finally, in the United Kingdom,¹⁰³ in parallel to the general minimum wage fixing procedure involving the Low Pay Commission, there used to be a special procedure for the agricultural sector, where minimum wages were fixed by the Agricultural Wages Board, a tripartite body. Only Scotland and Northern Ireland now still have such a body, the last survivor of the former wages boards, as the board for England and Wales was abolished in April 2013.

Section 4. Minimum wages fixed by collective bargaining

130. The fixing of minimum wages by collective bargaining can be provided for by law or result from national practice. Only countries in which it is the principal or sole method of fixing minimum wages are examined here. In Germany,¹⁰⁴ minimum wages, where they exist, are almost exclusively set by collective agreement, generally by sector, although there is a trend towards decentralization of bargaining. There are two distinct procedures for the extension of collective agreements, one that is fairly complex to implement in the framework of the general legislation, and the other under the Posted Workers Act (AEntG). In Finland,¹⁰⁵ minimum wages are essentially determined by

¹⁰⁰ (3) s. 2. From 2010 to 2012, consensus could not be achieved in the Commission because the Government insisted on fixing the minimum wage at a level lower than that agreed between the social partners. In 2010, the social partners had agreed to raise the minimum wage to 50 per cent of the average wage in the framework of the package of crisis measures submitted to the Government, but that proposal was rejected. See also Poland – CEACR, Convention No. 99, direct request, 2013.

¹⁰¹ (1) s. 112; (2) ss 2 and 5. In April 2013, the Council failed to take a decision within the allotted time limit and the Government decided to leave the amount of the minimum wage unchanged.

¹⁰² (1) s. 52B.

¹⁰³ (4) s. 72.

¹⁰⁴ (2) s. 1(1). See Eurofound: *Germany: Industrial relations profile*, Dublin, 2011. Based on available information, collective agreements currently cover 12 branches of economic activity and approximately 60 per cent of workers. However, the federal Government plans to introduce a national minimum wage in 2015. On the extension procedure: (1) s. 5; (3) s. 7. For the sectors included in the scope of the Posted Workers Act of 20 April 2009, foreign posted workers in Germany must enjoy the same wage conditions as German workers, with this objective being achieved by the extension of collective agreements.

¹⁰⁵ (1) Chapter 2, ss 7 and 10; (2) ss 2 and 4; (3) s. 1. According to the Government, a collective agreement is considered to be representative if it covers at least 50 per cent of workers in the sector concerned. Some 160 collective agreements in the private sector have been declared of general application. The minimum wage provisions contained in them apply to over 80 per cent of private sector workers.

sectoral collective agreements. A commission is responsible for declaring the general applicability of national collective agreements which are representative of the sector that they cover. When no collective agreement is applicable, workers have the right to normal and reasonable remuneration. In Iceland,¹⁰⁶ the minimum wage system is based on extended sectoral collective agreements. In Sweden,¹⁰⁷ and Switzerland,¹⁰⁸ – where there is no national minimum wage – collective bargaining is also the principal method of determining minimum wages. The same applies to Denmark,¹⁰⁹ where there is no procedure for extending collective agreements. According to the available information, when an employer concludes a collective agreement, this creates a presumption of the incorporation of the provisions of the collective agreement into the employment contract. In Belgium,¹¹⁰ the national minimum wage is fixed by an inter-sectoral collective agreement adopted by the National Labour Council. In addition, sectoral minimum wages are fixed by joint commissions. According to the Government, over 95 per cent of collective agreements have been made binding by royal decree for all workers in the sectors concerned.

131. In Norway,¹¹¹ collective bargaining generally takes place at two levels: the national level (with sectoral or inter-sectoral bargaining) and the enterprise level. In practice, wage bargaining is coordinated, as there is general agreement that wage growth in the sectors most exposed to international competition should constitute the framework for wage increases in other sectors. In addition, an act on the extension of collective agreements was adopted in 1993, but was only implemented for the first time in 2004, due to fears of wage dumping aroused by the expansion of the European Union. In Italy,¹¹² collective bargaining, including wage bargaining, also takes place at two levels: there are national sectoral agreements and enterprise agreements. Under the Italian Constitution, workers are entitled to remuneration proportionate to the quantity and quality of their work and, in any case, sufficient to ensure for them and their families a life with freedom and dignity. Based on this provision, the courts assess whether remuneration is adequate by reference to sectoral collective agreements, even though the legislation does not confer a binding nature *erga omnes* to these agreements.

¹⁰⁶ (1) ss 5–6; (2) s. 1.

¹⁰⁷ (1) s. 23. The coverage rate of collective agreements is 87 per cent in the private sector and 100 per cent in the public sector, although there is no legal procedure for extension. According to the Government, collective agreements apply to all employees in the establishments covered by the collective agreement, whether or not they are unionized. See also Eurofound: *Sweden: Industrial relations profile*, Dublin, 2012.

¹⁰⁸ (2) s. 356; (3) ss 1 and 1a. Collective agreements have been concluded only for some branches of economic activity. A collective agreement may be extended at the request of the contracting parties. It may also be requested by a tripartite commission, with the agreement of the signatories, if it finds that in a branch or occupation, normal wages and working time in the locality, branch or occupation are subject to persistent unfair undercutting.

¹⁰⁹ There is no legislation on collective agreements in Denmark. Regulation has developed on the basis of the case law of the Permanent Court of Arbitration. J. Malmberg: “The collective agreement as an instrument for regulation of wages and employment conditions”, in *Scandinavian Studies in Law*, Stockholm Institute for Scandinavian Law, 2002, Vol. 43, pp. 191 and 198.

¹¹⁰ (2) ss 5–7; (9).

¹¹¹ (1). See also Eurofound: *Norway: Industrial relations profile*, Dublin, 2011. According to the Government, regulations extending the scope of collective agreements are currently in force for the construction industry, shipyards, agriculture and the cleaning sector. In its comments, the Norwegian Confederation of Trade Unions points out that, owing to gaps in the legislation, its application gives rise to recurrent discussions about the criteria for applying wage agreements.

¹¹² (1) s. 36; (2) ss 2067–2080; (4); (5). On the application of article 36 of the Constitution, see *International labour law reports*, Martinus Nijhoff, The Hague, Vol. 18, 2000, p. 427.

132. In *Bosnia-Herzegovina*,¹¹³ minimum wages are fixed by collective agreement both in the Federation of Bosnia and Herzegovina and the Republika Srpska. In Chad,¹¹⁴ minimum interoccupational wages are fixed by agreement between representative employers' and workers' organizations. In Slovakia,¹¹⁵ in principle, the adjustment of the minimum wage is decided each year by agreement between employers' and workers' representatives, and is then the subject of a government decision. However, if an agreement is not concluded by a certain date, the adjustment is decided by the Government alone.

133. Joint industrial councils, also including independent members, are established in Gambia¹¹⁶ for certain sectors. Minimum terms and conditions of employment for the sector are fixed by majority agreement between employers' and workers' representatives. The Government may ask the joint industrial council to reconsider its decision, but the final decision belongs to the latter. In addition, at the joint request of an employer and a trade union, the Government may exempt a category of workers, industry or establishment from the application of an agreement concluded by a joint industrial council, if it is satisfied that there exists machinery for collective bargaining sufficient to maintain adequate terms and conditions of employment for the workers concerned.

134. In some countries, a vertical division has been established between, on the one hand, organized sectors in which wages are regulated by collective bargaining and, on the other, sectors in which the Government considers, for example, that workers do not have real bargaining power and that it is necessary to fix minimum wages. In Cyprus,¹¹⁷ collective agreements are concluded both at the sectoral and enterprise levels. In addition, minimum wages can be fixed by order for jobs in which wages are unreasonably low. According to the Government, the objective is to protect workers with weak bargaining power who are not covered by a collective agreement. A similar system exists in Mauritius,¹¹⁸ where the minister may refer the matter to the National Remuneration Board with a view to fixing minimum wages in sectors where no arrangements exist for the effective regulation of wages and conditions of employment by collective agreements or otherwise. In India,¹¹⁹ the Minimum Wages Act provides for the fixing of minimum wages by the public authorities, at the federal and state levels, for a certain number of occupations in non-organized sectors where the risk of exploitation of workers is considered high. In organized sectors, such as banking, the applicable wages are fixed by collective agreement. In *Kenya*,¹²⁰ the minimum wage fixing system, based on wages councils, was established prior to independence when collective bargaining was weak. These bodies still provide a safety net for workers not covered by a collective agreement.

¹¹³ (1) s. 69; (5) s. 91.

¹¹⁴ (2) s. 249.

¹¹⁵ (3) s. 7.

¹¹⁶ (1) ss 110–111, 115 and 121.

¹¹⁷ (1) s. 26(2); (2) s. 3(1). In February 2013, a bill to give the Minister of Labour power to extend sectoral collective agreements was put before Parliament.

¹¹⁸ (1) s. 91.

¹¹⁹ (2). See Government of India, Ministry of Labour and Employment, Labour Bureau: *Report on the working of the Minimum Wages Act, 1948 for the year 2011*, p. 11; S. Pratap: "Collective bargaining in India: Recent trends", in *Asian labour update, No. 79, Redefining collective bargaining in Asia*, April–June 2011.

¹²⁰ T. Fashoyin: *Collective bargaining and employment relations in Kenya*, ILO, Industrial and Employment Relations Department, Working Paper No. 13, 2010, pp. 16 and 19.

135. In Austria,¹²¹ minimum wages are also fixed, in principle, by sectoral collective agreements, which may be extended. The Federal Conciliation Office can only fix minimum wages for groups of workers for whom a collective agreement has not been concluded.

136. In certain countries, the legislation expressly limits the involvement of State authorities in fixing minimum wages to cases where a collective agreement does not apply to the workers concerned. In South Africa,¹²² a sectoral determination, which is a government decision, cannot cover wages and workers bound by a collective agreement concluded by a bargaining council. In practice, determinations cover industries employing large numbers of unskilled workers who the Government regard as having less bargaining power. In *Guatemala*,¹²³ when minimum wages are determined by collective agreement, rates cannot be fixed by the ordinary procedure (ministerial decision after consultation with joint commissions and the National Wages Commission) for the enterprise, zone or branch covered by that agreement. In *Niger*,¹²⁴ in the absence of collective agreements, or where they are silent on the subject, minimum wages are set by decree by occupational category. In Namibia,¹²⁵ minimum wages have been fixed up to now only by collective agreement, which may be extended, but only for some sectors. The Labour Act also allows the possibility of fixing minimum wages by wages orders. However, under the Act, such an order ceases to be in force if it is overtaken by a collective agreement providing for better conditions than those set out by that order. In *Zambia*,¹²⁶ the Minimum Wages and Conditions of Employment (General) Order does not apply to any occupation where wages and conditions of work are regulated by collective bargaining, provided that those conditions are not less favourable than those established by the Order.

137. In addition, the legislation in some countries provides that collective agreements may fix minimum wage rates higher than those set by other procedures. This is the case, for example, in Argentina,¹²⁷ Armenia,¹²⁸ Azerbaijan,¹²⁹ Bulgaria,¹³⁰ Cameroon,¹³¹ Central African Republic,¹³² Madagascar¹³³ and Serbia.¹³⁴ In *Burkina Faso*,¹³⁵ for

¹²¹ (1) ss 2, 11–12, 18 and 22. See also ILO: *Decent work country profile Austria*, 2009, pp. 9–10. In 2007, the social partners concluded a framework agreement under the terms of which sectoral collective agreements should provide a minimum wage of €1,000 per month for full-time workers.

¹²² (1) s. 55(7). A sectoral determination for a given sector or zone cannot cover a matter for which a collective agreement has been concluded. See also D. Budlender: *Industrial relations and collective bargaining: Trends and developments in South Africa*, ILO, Industrial Relations and Employment Department, Working Paper No. 2, 2009, p. 10.

¹²³ (2) s. 115(2).

¹²⁴ (2) s. 163.

¹²⁵ (1) ss 13(3)(c) and 70–71. According to the Government's report, agriculture, construction and the security services are the only sectors currently covered by collective agreements.

¹²⁶ (3) s. 2(1)(d).

¹²⁷ (2) s. 8.

¹²⁸ (2) s. 179(2).

¹²⁹ (2) s. 155(4).

¹³⁰ (2) s. 50.

¹³¹ (1) s. 62(2).

¹³² (1) s. 197(2).

¹³³ (2) s. 175.

¹³⁴ (1) ss 8–10.

¹³⁵ (1) s. 190; (4); (8).

branches covered by a collective agreement, wage bargaining takes place in a joint committee. In *France*,¹³⁶ in addition to the SMIC, wage scales are determined by sectoral collective agreements. If the minimum wage set by collective agreement is lower than the SMIC, the employee is entitled to be paid the SMIC. This occurs in several branches. According to the Government, this situation may result from the structural loosening of wage bargaining in the branch concerned, or the fact that the bottom of the scale has been overtaken by the latest adjustments of the SMIC. Various measures have been taken to address this problem. In particular, the Labour Code establishes an obligation to engage wage bargaining at the occupational branch level within three months when at least one of the coefficients of minimum wage scales set by collective agreement falls below the SMIC. A branch wage bargaining monitoring committee is responsible for following up and reviewing adjustments of wage scales. In *the former Yugoslav Republic of Macedonia*,¹³⁷ the Minimum Wage Act, 2012, which introduced a national minimum wage, required all collective agreements to be brought into conformity within six months of its entry into force.

138. Finally, it is interesting to note the way in which the legislation of the *United Republic of Tanzania*¹³⁸ emphasizes the close link between collective bargaining and minimum wage fixing. The functions of wage boards, in addition to making recommendations on minimum wage rates, include promoting collective bargaining between trade unions, employers and employers' organizations, and thus can facilitate bargaining on minimum remuneration and conditions of employment. Moreover, if a collective agreement is concluded following such facilitation, the wage board has to recommend its extension if the parties to the agreement are sufficiently representative, or, if not, it may make such a recommendation itself.

Conclusion

139. Convention No. 131 requires the establishment and maintenance of minimum wage fixing machinery that is suited to the conditions and needs of each country, while Recommendation No. 135 contains an indicative list of the methods which may be used. Countries are free to implement the method or methods of their choice, provided that they respect the other requirements of the Convention, and particularly the obligation to consult fully with the social partners on the establishment and application of minimum wage fixing machinery and, where appropriate, allow them to participate directly in the application of this machinery. Systems based on the unilateral determination of minimum wages by the government naturally raise problems of compliance with this fundamental requirement of the Convention. In a large number of countries, minimum wages are fixed by government decision after consultation with employers' and workers' organizations. However, the existence of a formal consultation procedure is not

¹³⁶ (1) s. L.2241-2-1, introduced by Act No. 2012-387 of 22 March 2012 on the simplification of the law and the lightening of administrative procedures. In the event of failure by employers' organizations to act, trade unions may demand the opening of bargaining within 15 days. In addition, a financial incentive to wage bargaining in the form of exemptions from social contributions was introduced. According to the Government's report, the situation of 175 branches with over 5,000 employees in the general sector (excluding agriculture, metalworking and construction) has been analysed and it has emerged that 31 branches where the lowest steps on the scale had been overtaken by the SMIC, as adjusted in July 2012, increased their minimum rate to a level higher than the SMIC; as of 1 October 2012, 91 branches still had at least one step lower than the SMIC, and 70 per cent of them had begun or planned bargaining to update the wage scales.

¹³⁷ (3) s. 8(1). See also Eurofound: *Former Yugoslav Republic of Macedonia (FYROM): Industrial relations profile*, Dublin, 2012, p. 6.

¹³⁸ (2) ss 36(1)(b), (2)(d) and 38(2).

sufficient to meet the requirements of the Convention. It is also necessary for consultation with the social partners to be effective and this is further elaborated in Chapter V. The Committee has recalled this principle on many occasions when supervising the application of the minimum wage fixing Conventions, particularly when employers' or workers' organizations maintain that the consultations provided under national legislation are in practice no more than a mere formality. ***Finally, minimum wage fixing through collective agreements is allowed under Convention No. 131, provided that such collective agreements are legally binding. The process of dialogue and the desire to cover all vulnerable workers remain at the heart of the minimum wage fixing machinery.***

Chapter IV

Variations in coverage of minimum wages

140. In this chapter, the Committee examines, in succession, the law and practice in member States that have instituted a generally applicable minimum wage, followed by systems based on minimum wages differentiated by region, sector or occupational category. The Committee then examines cases in which differentiated minimum wages have been established on the basis of other criteria, such as sex, age, the status of workers engaged in training, nationality or disability. In these cases, the Committee focuses on the problems that such provisions may raise with respect to the Convention and, more generally, the fundamental Conventions and the ILO Constitution. The various categories outlined above may, of course, be combined in some countries. For example, a national minimum wage may be supplemented by higher sectoral minimum wages, as the Committee has explained in Chapter III. Similarly, regional minimum wages may be differentiated by sector and, where sectoral minimum wages are fixed, wage scales may include differing minimum wage rates for different occupational categories.

141. The Committee recalls in this regard that, in accordance with Paragraph 5 of Recommendation No. 135 the system of minimum wages may be applied either by fixing a single minimum wage of general application or by fixing a series of minimum wages applying to particular groups of workers. The Recommendation also specifies that a system based on a single minimum wage need not be incompatible with the fixing of different rates of minimum wages in different regions or zones with a view to allowing for differences in the cost of living, and should not impair the effects of decisions, past or future, fixing minimum wages higher than the general minimum for particular groups of workers.¹

¹ The questionnaire prepared by the Office for the Conference's first discussion before the adoption of Convention No. 131 and Recommendation No. 135, asked constituents whether – if they were in favour of the principle of general coverage for all wage earners, subject to any exceptions that might be considered necessary – they considered that a suitable way of providing for this would be to provide for the fixing of a national minimum wage. It emerged from the replies that a clear majority of governments wanted the planned instrument to contain such a provision, while an appreciable minority took the opposite view. The proposed conclusions combined the two by suggesting the provision in the Convention of the principle of general coverage of all wage earners, subject to any exceptions deemed necessary, while the Recommendation should provide that efforts should be made to achieve this through a national minimum wage wherever possible. See ILC: Report VII(2), 53rd Session, Geneva, 1969, question 13, pp. 47 and 113–114, and proposed conclusions, point 19. It was specified that a national minimum wage could be compatible with the fixing of different rates of minimum wages in different regions or areas, with a view to allowing for differences in the cost of living, and should not impair the effects of decisions, past or future, fixing minimum wages higher than the national minimum for particular groups of workers. However, the working group set up by the Minimum Wage Committee during the first Conference discussion modified the proposed conclusions by suggesting an alternative between a national minimum wage and a series of minimum wages applying to particular groups of workers. The wording as proposed, and as adopted by the Committee, is almost identical to the final text of Paragraph 5 of Recommendation No. 135 as adopted the following year, having later been subject only to minor amendments. See ILC: *Record of Proceedings*, Appendix IX, 53rd Session, Geneva, 1969, pp. 684 and 686 (point 17).

Section 1. Minimum wage of general application

142. In this section, the Committee examines the law and practice of member States in which a single minimum wage applies to all or almost all categories of workers covered by the relevant provisions, including systems providing for a minimum wage of almost general application, on the one hand, and a specific minimum wage for particular, very limited occupational categories, such as domestic workers, on the other. Similarly, States that have established an interoccupational minimum wage with exceptions, for example for young workers, are included in this section. The issue of such lower rates is examined further in section 5.

143. Reviewing State practice on the basis of minimum wage fixing procedures, which are discussed in Chapter III, does not necessarily correspond to a review based on the scope of minimum wages. In some countries, for example, a minimum wage of general application is established on a tripartite basis. This is the case in Colombia,² the Republic of Korea³ and Serbia.⁴ In Egypt,⁵ a national minimum wage was fixed in 2010 by the National Wages Council. In Turkey,⁶ a single minimum wage is fixed for all workers, whether or not they are covered by the Labour Act. In the Islamic Republic of Iran,⁷ although the Labour Code allows for the possibility of setting minimum wages by region and sector, a single minimum wage has been established for the whole country. In Thailand,⁸ a single minimum wage has been applied equally to all regions of the country since January 2013. Moreover, in Albania,⁹ Antigua and Barbuda,¹⁰ Latvia,¹¹ Lithuania,¹² Portugal,¹³ Spain,¹⁴ Timor-Leste,¹⁵ Ukraine,¹⁶ United Kingdom¹⁷ and

² (3) s. 2(d).

³ (3) s. 4(1). This provision permits different types of enterprises to apply different minimum wages.

⁴ (1) ss 111–113.

⁵ (1) s. 34(1); (2) ss 1–3. See also *Egypt* – CEACR, Convention No. 131, direct request, 2012.

⁶ (2) s. 39(1). Homeworkers and domestic workers, although excluded from the scope of the Labour Act, are covered by the national minimum wage. Turkey – CEACR, Convention No. 26, direct request, 2009.

⁷ (1) s. 41.

⁸ (1) ss 78–79. According to the available information, one of the aims is to encourage workers to develop their skills, in light of the increased competition that will result from the launch of the Economic Community of the Association of Southeast Asian Nations (ASEAN) in 2015. Furthermore, according to estimates, the modernization of the national economy and productivity gains will lead to a reduction in geographical disparities. S. Alexander, V. Salze-Lozac'h and A. Winijkulchai: *Thailand adopts nationwide minimum wage policy amid controversy*, The Asia Foundation, Jan. 2013. Available at: www.asiafoundation.org.

⁹ (2) ss 111(1), 200.

¹⁰ (1) s. C21(1) and (10).

¹¹ (2) s. 61; (3) s. 3.1.7; (5).

¹² (2) s. 187(1). The Government may also, on the recommendation of the Tripartite Committee, fix differentiated minimum wage rates, including by sector. It has not, however, taken up this option.

¹³ (2) s. 273(1).

¹⁴ (2) s. 27.

¹⁵ (1) s. 100.

¹⁶ (3) s. 10.

¹⁷ (1) s. 1; (4) s. 72. The national minimum wage previously applied to all sectors except agriculture. In 2013, however, the Government abolished the Agricultural Wages Board for England and Wales and, consequently, the agricultural minimum wage as distinct from the national minimum wage.

Bolivarian Republic of Venezuela,¹⁸ the national minimum wage is fixed by public authorities, governmental or other, after consultation with the social partners.

144. Several countries have introduced a guaranteed interoccupational minimum wage (SMIG). This is the case in Benin,¹⁹ Cameroon,²⁰ Gabon,²¹ Mali,²² Mauritania²³ and Niger.²⁴ In France,²⁵ the SMIC replaced the SMIG in 1970. In Algeria,²⁶ it is known as the national guaranteed minimum wage (SNMG). A national minimum wage has also been established in Armenia,²⁷ Azerbaijan,²⁸ Bahamas,²⁹ Belarus,³⁰ Plurinational State of Bolivia,³¹ Chile,³² Croatia,³³ Cuba,³⁴ Estonia,³⁵ Montenegro,³⁶ Netherlands³⁷ and Slovenia.³⁸ Moreover, in Iraq³⁹ and Kyrgyzstan,⁴⁰ a minimum wage of general application exists for unskilled workers.

145. In other countries, such as the Russian Federation,⁴¹ regional minimum wages may coexist with a national minimum wage. In Brazil,⁴² federal law establishes a minimum wage that applies to all workers. At the same time, the federal district and the states may (in the absence of federal legislation or a collective labour agreement) establish specific remuneration floors (*piso salarial*) for certain categories of workers, although this

¹⁸ (1) s. 91; (2) s. 129.

¹⁹ (1) s. 210.

²⁰ (1) s. 62(1).

²¹ (1) s. 149.

²² (1) s. L.96.

²³ (1) s. 195; (2). The Labour Code makes provision for differentiated rates for agricultural activities to be fixed by decree, but no such decree has been passed.

²⁴ (2) s. 163.

²⁵ (1) s. L.3231-2. The difference between the SMIG and the SMIC is explained in Chapter VI. The SMIC applies throughout metropolitan France, in the overseas departments and in the overseas collectivities of Saint Barthélemy, Saint Martin and Saint Pierre et Miquelon.

²⁶ (1) s. 87, part 1.

²⁷ (2) s. 179(1).

²⁸ (2) s. 155(1)–(2).

²⁹ (2) s. 4.

³⁰ (2) s. 59.

³¹ (2) s. 52; (5) s. 8. The General Labour Act provides for minimum wages to be fixed by geographical zone and branch of activity; however, a national minimum wage has been fixed by the Government.

³² (4) s. 1.

³³ (2) s. 2.

³⁴ (4) ss 1 and 3. The minimum wage in enterprises undergoing improvement, i.e. enterprises that are introducing modern management techniques, is 30 per cent higher.

³⁵ (1) s. 29(5).

³⁶ (2) s. 80.

³⁷ (1) s. 8.

³⁸ (2) ss 4 and 6.

³⁹ (1) s. 46(1).

⁴⁰ (1) s. 154(1).

⁴¹ (2) ss 133, 133.1.

⁴² (5) ss 1 and 3; (1) art. 7(V); (7) s. 1.

remuneration may not be lower than the federal minimum wage. In India,⁴³ in addition to minimum wages fixed by state, sector and occupational category, the concept of a “national wage floor” was introduced on the basis of recommendations made by the National Rural Labour Council, and was implemented in 1996.

146. Moreover, if different minimum wage rates are fixed for certain branches of activity or occupational categories, a basic minimum wage may apply across all economic sectors. This is the case in *Ecuador*,⁴⁴ *Malta*,⁴⁵ *Syrian Arab Republic*,⁴⁶ *the former Yugoslav Republic of Macedonia*⁴⁷ and *Uruguay*.⁴⁸ In the *Republic of Moldova*,⁴⁹ a national minimum wage and wage scales for occupational categories exist side by side. In the Czech Republic,⁵⁰ minimum wage rates have been fixed according to a scale comprising eight occupational categories. There is also a national minimum wage, which corresponds to the first level on this wage scale. Similarly, in Uzbekistan,⁵¹ each enterprise has to fix its own wage scale based on the complexity of the jobs, and the minimum wage corresponds to level 1 on the unified wage scale. In Mauritius,⁵² minimum wages are fixed by occupational category for different sectors. However, according to information provided by the Government, the question of a national minimum wage is among the priority issues proposed for discussion by the Technical Committee on Labour and Industrial Relations, recently established within the framework of the National Tripartite Forum. Finally, in Italy,⁵³ a bill to introduce a national minimum interoccupational wage was submitted to Parliament in March 2009.

Section 2. Minimum wages by geographical area

147. In a number of countries, minimum wages are fixed by reference to specific geographical regions or areas, generally to take account of differences in economic development and the cost of living. In Indonesia,⁵⁴ wage councils exist at the provincial, district and municipal levels. They make recommendations on minimum wage fixing at the level of their respective geographical subdivisions. In *Japan*,⁵⁵ following the

⁴³ According to information provided by the Government, the intended objective was to establish a uniform wage structure and to reduce disparity in minimum wages. This minimum was last adjusted in 2011, but still has no basis in law. The governments of the various states are persuaded to fix minimum wages that are no lower than the national minimum. As part of a project being undertaken with assistance from the ILO, the Government plans to make this minimum wage compulsory. See P. Belser and U. Rani: *Extending the coverage of minimum wages in India: Simulations from household data* (ILO, Conditions of Work and Employment Series No. 26, 2010), pp. 9–10.

⁴⁴ (2) s. 117.

⁴⁵ (2) ss 3–4.

⁴⁶ (1) ss 69–70.

⁴⁷ (3) s. 4.

⁴⁸ (2) s. 10(A).

⁴⁹ (1) ss 131 and 134.

⁵⁰ (2) s. 111; (4) ss 2–3.

⁵¹ (1) ss 153 and 155. According to information from the Government, level 0 was abolished in 2012.

⁵² (1) ss 90–93.

⁵³ Italy – CEACR, Convention No. 26, direct request, 2012.

⁵⁴ (2) ss 89 and 98; (4) ss 1–2, 6–7, 21–24 and 38–41. In China, minimum wage rates are established by province, autonomous region and municipality. See (2) ss 7, 8.

⁵⁵ (2) s. 9(1). There are, however, special minimum wages for specific sectors. According to information sent by the Government, as at 31 March 2012, there were 246 special minimum wages, of which 245 were set at the

rationalization of the minimum wage system in 2007, regional minimum wages have become central to the system as a safety net for workers. A minimum wage must be established in every prefecture, without exception.

148. In the Philippines,⁵⁶ minimum wages for agricultural and non-agricultural workers are fixed by the various regional tripartite wages and productivity boards, but guidelines are drawn up by the National Wages and Productivity Commission, so as to ensure a certain coherence. According to information provided by the Government in its report, different minimum wage rates may be fixed for each region, sector or geographical area (province or locality), depending on the prevailing socio-economic conditions. In Panama,⁵⁷ the country is divided into two regions for the purpose of fixing minimum wages for 32 sectors. In Honduras,⁵⁸ minimum wages are fixed by sector and vary according to the number of workers in an enterprise. The Minimum Wage Act provides that the Minimum Wage Commission may recommend different minimum wages for different economic zones or regions, if it deems appropriate. In Viet Nam,⁵⁹ the country is divided into four regions to which different minimum wage rates apply.

149. As far as federal States are concerned, some, such as the Bolivarian Republic of Venezuela, establish a single minimum wage at the national level. Legislation in other countries provides either for a federal minimum wage alongside minimum wages established by states of the federation, or for those states to have exclusive competence. In Canada,⁶⁰ for example, the government of each province and territory has fixed its own minimum wage. There has been no federal minimum wage since 1996, with workers in federal enterprises being covered since then by the minimum wage applicable to the province in which they are employed. In the United States,⁶¹ a federal minimum wage does exist, but the majority of states and territories apply their own minimum wage rates. According to information from the Government, if a worker is eligible both for the federal minimum wage and for the minimum wage fixed for the state or territory

prefectural level and only one centrally. See H. Nakakubo: “A new departure in the Japanese minimum wage legislation”, in *Japan Labor Review*, Vol. 6, No. 2, spring 2009. In observations sent concerning the application of Convention No. 131, the National Confederation of Trade Unions (ZENROREN) noted that the gaps between the minimum wage rates applicable in different prefectures had been widening since the revision of the Minimum Wages Act in 2007. It claimed that gaps between minimum wage rates in the different prefectures had a serious impact on employment in rural areas as young workers increasingly migrated to big cities in search of higher pay. Considering that there was no valid reason for a relatively small country to have 47 different minimum wages, ZENROREN was in favour of adopting a single minimum wage to apply to the whole country. In its reply, the Government stated that regional differences existed in the cost of living and the ability of enterprises to pay wages, and therefore it was only natural to determine wage rates according to the actual conditions of the respective regions. See *Japan – CEACR*, Convention No. 131, observation, 2013.

⁵⁶ (2) ss 99 and 120–123; (5), Chapters II and III.

⁵⁷ (3) s. 4. According to information from the Government, the number of regions decreased from three to two in 2010 and some districts have been transferred to region 1 in view of their higher level of development. The Government also states that these measures are intended to reduce worker migration between different regions, leading to a better balance between work and family life.

⁵⁸ (3) s. 23. A so-called “regionalized” minimum wage, lower than other minimum wage rates, is also in force: (7). According to the available information, it applies in the departments of Choluteca, Valle, El Paraíso, Santa Bárbara and Olancho, and was introduced in 2007 for a period of ten years as a result of increased labour costs in Honduras in comparison with neighbouring countries.

⁵⁹ (1) s. 91; (2) s. 3 and Appendix I.

⁶⁰ (2)–(30). K.B. Kerr: *Federal minimum wages and low-income workers in Canada*, Library of Parliament, publication No. PRB 08-39F, 5 Nov. 2008, updated on 24 Oct. 2012, pp. 1–3.

⁶¹ (1) s. 6(a)(1). According to the Government’s report, in 20 states, these minimum wage rates are higher than the federal rate, while 25 other states and territories have set the minimum wage at the same level as the federal minimum. Four states and territories apply lower rates, while in five states no minimum wage has been fixed.

concerned, the higher wage has to be paid. In India,⁶² minimum wages are fixed either by the central authorities or by federate states, depending on the sector concerned. According to information provided by the Government, minimum wages have been fixed centrally for 45 occupational categories and at the state level for 1,679 occupational categories. In order to ensure some uniformity, the central Government has asked states to create regional advisory committees. Five committees are now operational, each covering several states. In Malaysia,⁶³ separate minimum wages apply to Peninsular Malaysia and to the rest of the national territory. In *Mexico*,⁶⁴ general minimum wages and minimum occupational wages apply according to two geographical zones made up of one or more municipalities that are not necessarily contiguous. In Pakistan,⁶⁵ under the 1961 Minimum Wages Ordinance, each provincial government sets a minimum wage on the recommendation of the provincial minimum wages board. These boards may recommend fixing a single minimum wage for the entire province or different minimum wage rates for different areas. Furthermore, the 1969 Minimum Wages Ordinance for Unskilled Workers, which applies only to commercial and industrial establishments employing at least 50 workers, fixes different minimum wages for three geographical zones: Karachi district, the industrial area and other areas. In the Russian Federation,⁶⁶ regional minimum wages may be introduced at the level of the federal subjects on the basis of agreements between representative employers' and workers' organizations, although these may not be lower than the national minimum wage rate. Finally, in *Bosnia and Herzegovina*,⁶⁷ separate general minimum wages have been set for the Republika Srpska and the Federation of Bosnia and Herzegovina.

150. In other countries, the minimum wages fixed for specific occupational categories or sectors may include regional variations. This is the case, for example, in South Africa⁶⁸ and *Kenya*.⁶⁹ In *Nepal*,⁷⁰ the Minimum Remuneration Committee submits recommendations to the Government concerning both minimum wage rates and cost-of-living allowances. Its recommendations for these allowances may be based on specific geographical areas. In the *Syrian Arab Republic*,⁷¹ tripartite committees must be formed in each governorate. They are responsible for making recommendations on minimum wage rates for each occupation. For the agricultural sector, minimum wages are also recommended by tripartite committees established in the various governorates. In the

⁶² (1) s. 2(b).

⁶³ (5) s. 4.

⁶⁴ (2) ss 91–94, 96, 557 and 570–571; (4) ss 1–2 and 5. The country was previously divided into three zones (A, B and C). Based on the observation that the cost of living in the three zones was becoming more and more similar, the council of representatives of the National Minimum Wages Commission (CONASAMI) decided, against the views of employer representatives, to merge zones A and B by increasing the general and occupational minimum wages for zone B to bring them up to the level of those in zone A. Minimum wages in zone C have remained unchanged, and this zone is now zone B. This reform took effect on 27 November 2012 and was applied for the adjustment of minimum wages for 2013.

⁶⁵ (2) ss 3 and 4; (3) Schedule.

⁶⁶ (2) s. 133.1. According to information provided by the Government, around half of the 83 federal subjects have introduced regional minimum wages.

⁶⁷ (2) s. 8; (6) s. 29.

⁶⁸ Three areas are defined in the sectoral determinations for the cleaning and security sectors, while the determinations for domestic workers and the wholesale and retail sector only distinguish between two areas.

⁶⁹ Minimum wages outside the agricultural sector vary not only by occupational category, but also by geographical area. Three areas are defined by the Regulation of Wages (General)(Amendment) Order, 2013.

⁷⁰ (1) s. 21(3).

⁷¹ (1) ss 71–73; (2) s. 29.

United Republic of Tanzania,⁷² the Minister of Labour may establish wage boards to provide recommendations on minimum wages and their competence may be defined by geographical area.

151. Finally, in certain countries where minimum wages are generally set by collective bargaining, collective agreements may define the geographical areas to which different minimum wage rates apply. In Belgium, for instance, the joint committees that set minimum wages for the sector(s) they cover may also, according to the Government's report, identify regions or areas to which different minimum wage rates apply. In Germany,⁷³ several national collective agreements provide for different minimum wage rates for specific geographical areas.

Section 3. Minimum wages by sector

152. In many countries, minimum wage rates are determined by sector. This is the case, for example, in *Australia*,⁷⁴ *Ecuador*,⁷⁵ *Gambia*,⁷⁶ *Guyana*,⁷⁷ *Honduras*,⁷⁸ *India*,⁷⁹ *Japan*,⁸⁰ *Malta*,⁸¹ *Nicaragua*,⁸² *Panama*,⁸³ *South Africa*,⁸⁴ *Sri Lanka*⁸⁵ and *Uruguay*.⁸⁶ In Mauritius, according to information provided by the Government, 30 sectors are covered by a remuneration order. In this regard, the Confederation of

⁷² (2) ss 35–39.

⁷³ For example, three areas have been defined for the construction sector: Berlin, the western part of the country and the eastern part of the country.

⁷⁴ (1) ss 143, 284(3) and 285. According to information sent by the Government, there are currently 122 modern awards, each covering one sector. See also *Australia* – CEACR, Convention No. 131, direct request, 2012. Similarly, in Botswana, the legislation provides for the establishment of minimum wages in the following sectors: construction and mining; wholesale and retail trade; manufacturing, service and repair; hotel, restaurant and leisure; road transport and the motor trade; security guards, domestic workers and agricultural sector: (1) annex 4.

⁷⁵ (2) ss 117(3) and 122–124; (4) ss 1–2. Sectoral committees to set and review minimum wages submit minimum wage proposals to the National Wage Council (CONADES). In 2010, the 115 existing branches of activity were grouped under 22 sectoral committees.

⁷⁶ (1) ss 110, 111.

⁷⁷ (1) ss 7–8; (2) ss 3–6, 10–11 and First Schedule; (3) s. 3 and First Schedule. Ministerial orders regulate minimum wages by sector and by occupational category.

⁷⁸ (6) s. 2.

⁷⁹ (1) s. 3 and Schedule.

⁸⁰ (2) s. 15. Special minimum wages may be fixed for a sector or occupation by the competent authority at the regional or national levels, after consultation with the Minimum Wage Council. According to information from the Government, 246 special minimum wages were in force as at 31 March 2012.

⁸¹ (2) ss 3–4. According to the Government, the minimum wages applicable in different sectors are set by 31 wages orders.

⁸² (3) s. 4(1).

⁸³ (3) s. 2.

⁸⁴ Minimum wages have been set by sectoral determinations for the following sectors: farm workers; forestry; wholesale and retail; taxi services; private security; civil engineering; cleaning services; and hotels and restaurants. A proposal to amend the Basic Conditions of Employment Act, currently being considered by Parliament, provides for the Government to publish sectoral determinations for employers and workers who are not covered by another sectoral determination. See *South Africa* – CEACR, Convention No. 26, direct request, 2013.

⁸⁵ (1) s. 20(1). In all, 43 wage boards have been created and now set minimum wages in their sectors.

⁸⁶ (3) ss 5–6. In addition to the national minimum wage, sectoral minimum wages are fixed by wage councils. In the private sector, 20 groups of activities have been formed, comprising around 180 subgroups.

Private Sector Workers (CTSP) reports that the economy of Mauritius is in a period of transition from an agricultural economy based on a monoculture to a knowledge-based economy, with many efforts being made to develop the services sector. The CTSP criticizes the fact that this sector – in which 75 per cent of those employed are women – is covered neither by a remuneration order, nor a collective agreement. According to the CTSP, this shortcoming could be perceived both as a violation of Convention No. 26 and as deliberate discrimination against women. It considers that the problem could be resolved if minimum wages were fixed for specific occupational categories, regardless of the sector concerned.

153. In Canada,⁸⁷ specific provisions exist on minimum wages in certain sectors at the provincial level. Manitoba has such provisions for the construction sector and Quebec for the garment industry. In *Guatemala*,⁸⁸ separate minimum wages are set for the agricultural sector, the non-agricultural sector, and the export and *maquila* sector. The Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG) considers that fixing a lower minimum wage rate for the *maquila* sector is a discriminatory practice. In Cambodia,⁸⁹ only the textile, clothing and footwear assembly sectors are covered by minimum wage regulations. In *Nepal*,⁹⁰ different minimum wages apply, on the one hand, to workers employed in tea plantations and in the rest of the organized sector, on the other. In Peru,⁹¹ workers in the mining sector are covered by a specific minimum wage, which must be at least 25 per cent higher than the national minimum wage, while a special act regulates minimum wages in the agricultural sector. Minimum wages have also been fixed for several sectors in *El Salvador*,⁹² Mozambique,⁹³ Saint Vincent and the Grenadines⁹⁴ and *United Republic of Tanzania*.⁹⁵

154. In several countries, different minimum wages are set for the agricultural sector and the rest of the private sector. In *Burkina Faso*,⁹⁶ *Central African Republic*,⁹⁷ Côte d'Ivoire,⁹⁸ *Morocco*,⁹⁹ Togo¹⁰⁰ and Tunisia,¹⁰¹ the government sets a SMIG and a guaranteed agricultural minimum wage (SMAG). In Argentina,¹⁰² the National Agricultural Labour Commission is responsible for setting minimum wages for the

⁸⁷ (9); (10); (22) s. 92.1.

⁸⁸ (4). See also *Guatemala* – CEACR, Convention No. 131, observation, 2012.

⁸⁹ (3).

⁹⁰ *Nepal* – CEACR, Convention No. 131, direct request, 2013.

⁹¹ (9) s. 1; (7) s. 7(2)(a).

⁹² (3)–(6). The following sectors are covered: agriculture; trade and services; textile and manufacture in *maquilas*; and harvesting coffee, cotton and sugar cane.

⁹³ (3). Different minimum wage rates apply to nine sectors.

⁹⁴ (2); (4)–(6).

⁹⁵ (2) ss 35(1) and 36(1)(c). Twelve sectoral wage boards have been created so far. See also *United Republic of Tanzania* – CEACR, Convention No. 131, direct request, 2013.

⁹⁶ (5) ss 1 and 2; (6).

⁹⁷ (1) s. 226.

⁹⁸ (1) s. 31.6.

⁹⁹ (3) s. 1.

¹⁰⁰ (5). The SMIG and SMAG rates fixed in 2012 remain identical.

¹⁰¹ (2); (3).

¹⁰² (5) s. 32.

agricultural sector. However, these rates may not be lower than the minimum living wage that is in force. In *Kenya*,¹⁰³ a General Wages Council and an Agricultural Wages Council have been set up to conduct investigations and make recommendations to the Minister of Labour concerning minimum wages. In Madagascar,¹⁰⁴ starting minimum wages and seniority minimum wages are determined by occupational category for both the agricultural and non-agricultural sectors. Agricultural minimum wages that differed by occupational category also used to apply in the United Kingdom,¹⁰⁵ but were abolished in 2013. In its observations, submitted before the adoption of the relevant act, the Trades Union Congress (TUC) opposed their abolition and indicated that it would campaign to keep the Agricultural Wages Board for England and Wales. The TUC pointed out that minimum wages for skilled and semi-skilled agricultural workers were higher than the national minimum wage and that their abolition would have a significant negative impact on wages in the agricultural sector.

155. In a number of countries, minimum wage rates, including sectoral minimum wages, are traditionally set by collective agreements, which may in certain cases be extended. This is the case at present in Germany,¹⁰⁶ where, according to the Government's report, 4 million workers employed in 12 branches are currently covered by sectoral minimum wages. The determination of minimum wages through collective bargaining is also the general rule in Austria,¹⁰⁷ Belgium,¹⁰⁸ Denmark,¹⁰⁹ Finland,¹¹⁰ Iceland,¹¹¹ Italy,¹¹² Norway,¹¹³ Sweden¹¹⁴ and Switzerland.¹¹⁵ In Namibia, the only minimum wages currently in force have been fixed by collective bargaining for certain sectors, such as agriculture, security services and construction. In other countries where a specific procedure exists for determining minimum wages (for example, by decision of the public

¹⁰³ (2) ss 43–44. In addition, the Minister of Labour may, after consultation with the National Labour Council, create a sectoral wage council, if the Minister considers that remuneration and other conditions of employment in a particular sector are not adequately regulated by collective agreements and that it may be expedient to set these conditions for workers in the sector. In 2012, a wage council was established for the floriculture sector, but it has not yet made recommendations concerning minimum wages.

¹⁰⁴ (5) s. 1.

¹⁰⁵ (4) s. 72. Agricultural minimum wages are still in force in Scotland and Northern Ireland.

¹⁰⁶ (2) s. 1(1). Furthermore, under the applicable legislation, if employers having concluded a sectoral collective agreement employ less than 50 per cent of the employees in that sector, minimum wages may be fixed by order of the Minister of Labour, on the recommendation of a committee of experts composed of representatives of the sector concerned. However, according to the Government, this option has never been used.

¹⁰⁷ The Government indicates in its report that more than 95 per cent of employment relations are covered by a sectoral collective agreement.

¹⁰⁸ According to the Government's report, almost all sectors have a specific minimum wage scale (only 4 per cent of them do not). In more than 95 per cent of cases, sectoral collective labour agreements have been made compulsory by royal decree for all employers in the sector.

¹⁰⁹ In its report, the Government states that minimum wage levels in sectors covered by a collective agreement may represent a point of reference for sectors that are not covered.

¹¹⁰ According to the Government's report, there are around 160 sectoral collective agreements, applying to more than 80 per cent of workers in the private sector.

¹¹¹ (2) s. 1.

¹¹² The Government indicates in its report that, in practice, collective bargaining has become the principal method of minimum wage fixing.

¹¹³ (1). According to information sent by the Government, regulations extending the coverage of collective agreements are currently in force for the construction sector, naval dockyards, agriculture and the cleaning sector.

¹¹⁴ The Government states in its report that there are 650 collective agreements covering wages and conditions of employment.

¹¹⁵ (3) ss 1 and 1(a).

authorities), sectoral minimum wages may be fixed by collective agreements. In *Burkina Faso*,¹¹⁶ in those branches covered by a collective agreement, the joint commission responsible for bargaining on wages and working conditions in the private sector fixes minimum wages for the branches concerned. For those branches that are not covered by a collective agreement, or where collective agreements are silent on the matter, the Council of Ministers determines occupational categories and the corresponding minimum wages by decree. In *Cameroon*,¹¹⁷ sectoral collective agreements determine occupational categories and the corresponding minimum wages for the various branches. In *Côte d'Ivoire*,¹¹⁸ collectively-agreed minimum wages are set by joint committees, while in *France*¹¹⁹ they are fixed by collective agreements concluded between the social partners for the various occupational branches. In *Gabon*, collectively-agreed minimum wages are fixed for individual sectors by order of the Prime Minister, issued following negotiations held at the Joint Wages Board. In *Romania*,¹²⁰ *the former Yugoslav Republic of Macedonia*¹²¹ and *Viet Nam*,¹²² sectoral minimum wages are also fixed by collective agreements.

Section 4. Minimum wages by occupational category

156. In *Costa Rica*,¹²³ legislative provisions allow for the possibility of fixing minimum wages for every intellectual, industrial, agricultural, export or commercial activity, taking into account the various regional or economic divisions. In practice, however, minimum wage rates are essentially differentiated by workers' qualifications, and the National Wage Council is called on to fix minimum wage rates for the various occupations. In *Slovakia*,¹²⁴ while remuneration is not set by collective agreement, employers have to pay workers remuneration at least equal to the minimum wage corresponding to the complexity of the job. For this purpose, employers have to classify posts according to a scale of complexity, applying the criteria set out in the Labour Code. In *Mauritania*,¹²⁵ the Labour Code expressly provides that, in the absence of collective agreements, or where they are silent on the matter, occupational categories and corresponding minimum wages shall be set by order of the Minister of Labour, issued after obtaining the views of the National Council for Labour, Employment and Social Security. In the *Czech Republic*,¹²⁶ minimum wage rates are fixed according to a scale

¹¹⁶ (1) s. 190(1); (4) s. 4(1); (6)–(8).

¹¹⁷ (1) s. 62(2). According to information sent by the Government, around 30 sectoral collective agreements have been signed.

¹¹⁸ (2) s. 47(5).

¹¹⁹ (1) ss L.2232-5 and L.2241-1.

¹²⁰ (2) s. 162(1).

¹²¹ (3) ss 8 and 10. It should be noted that the 2012 Minimum Wage Act provides that existing collective agreements must be harmonized with the provisions of the Act, or they will be invalidated, and fixes adjustment coefficients for sectoral minimum wages to apply in sectors where the average gross wage falls below the floor of 15,600 Macedonia denars (MKD) (about US\$325).

¹²² (1) s. 91(3).

¹²³ (2) s. 177; (3) s. 15; (4) ss 28(a) and 45; (8).

¹²⁴ (2) s. 120(1) and (3), and Annex I.

¹²⁵ (1) s. 197.

¹²⁶ (4) s. 3.

comprising eight occupational categories based on the complexity of the work and the corresponding responsibilities. In India,¹²⁷ Mauritius¹²⁸ and South Africa¹²⁹ differentiated minimum wage rates are also set by occupational category for different sectors. In a number of countries, interoccupational or sectoral collective agreements also contain wage scales differentiated by occupational category. This is the case, for example, in Belgium, *France*, Gabon, Iceland, Italy, Norway, Sweden and Togo.

157. It may also be noted that, in certain member States, specific minimum wage rates have been set for domestic workers. This is the case in Barbados,¹³⁰ Jamaica,¹³¹ Panama¹³² and South Africa.¹³³ Different rates for various categories of domestic workers have been set in Mali,¹³⁴ Saint Vincent and the Grenadines¹³⁵ and Zimbabwe.¹³⁶ In Finland,¹³⁷ while no general collective agreement covering domestic workers is in force, the Government may fix minimum wages and other terms and conditions of employment for these workers if it considers it necessary in order to provide them with equitable and reasonable means of subsistence. In the Hong Kong Special Administrative Region, China,¹³⁸ although the Minimum Wage Ordinance does not apply to domestic workers who dwell in the employer's household free of charge, a model contract has been introduced for foreign domestic workers, who are covered by a specific minimum wage fixed by the Government. In Namibia,¹³⁹ the Wages Commission met for the first time in 2012, in accordance with the 2007 Labour Act, and is expected to adopt minimum wage rates for domestic workers.

158. In several countries, special legislation has been adopted to cover the various aspects of the employment relationship for domestic workers. An act was adopted in Argentina¹⁴⁰ in April 2013, providing for minimum wages to be fixed for various categories of household staff by the National Domestic Work Commission. Until this Commission is established, minimum wages will be fixed by the Government. Similarly, in the Philippines,¹⁴¹ an act providing protection for domestic workers was adopted in 2013 introducing minimum wages that differ by geographical area. The act also provides that, one year after its entry into force, regional tripartite wages and productivity boards shall review and, if appropriate, determine and adjust the minimum wage rates for these

¹²⁷ In Rajasthan and Uttar Pradesh, for example, wage scales distinguish between unskilled, semi-skilled, skilled and, in some cases, highly skilled workers.

¹²⁸ See, for example, the Public Transport (Buses) Workers (Remuneration Order) (Amendment) Regulations, 2012.

¹²⁹ This is the case, for example, for civil engineering, security services and commerce.

¹³⁰ (4) s. 3A; (8) s. 2. However, the minimum rates for these workers have not been revised since 1982.

¹³¹ (3) s. 5.

¹³² (3) s. 6. There is also differentiation by geographical area.

¹³³ Sectoral Determination 7, wage scales in force since 1 December 2013. A wage supplement is envisaged for domestic workers whose normal working week is 27 hours or less.

¹³⁴ (2) s. D.86-10.

¹³⁵ (3).

¹³⁶ (4) First Schedule.

¹³⁷ (4) s. 12.

¹³⁸ (2) s. 7(3).

¹³⁹ (1) ss 13 and 105–114.

¹⁴⁰ (4) s. 18.

¹⁴¹ (6).

workers. In *Spain*,¹⁴² a royal decree regulating the employment relationship for domestic workers, which was adopted in 2011, provides that they are entitled to the interoccupational minimum wage. Moreover, as the interoccupational minimum wage is set both at a monthly and a daily rate, a specific minimum wage applies to domestic workers employed by the hour. In *Morocco*, a bill determining working and employment conditions for household staff was submitted to Parliament in May 2013. In particular, it provides for wages to be fixed by the parties, on condition that the part of the wages to be paid in cash is not less than 50 per cent of the minimum wage for the industrial and commercial sectors.

159. Other national legislation, for example in Austria,¹⁴³ establishes a specific minimum wage regime for homeworkers. In Argentina,¹⁴⁴ the law provides for wage commissions to be created for branches of activity in which homeworkers are employed. In Canada (Ontario),¹⁴⁵ homeworkers receive 110 per cent of the minimum wage to take into account the costs they have to defray. In Germany,¹⁴⁶ a specific process for fixing minimum wages for homeworkers may be implemented under certain conditions with the participation of tripartite committees.

160. In some cases, the minimum wage rate varies according to workers' qualifications. In Luxembourg,¹⁴⁷ the level of the social minimum wage is increased by 20 per cent for employees with occupational qualifications. A skilled employee is an employee who works in a profession that requires an occupational qualification, usually obtained through education or training and recognized by official certification. In Hungary,¹⁴⁸ an increased minimum wage applies to workers in jobs for which a secondary education or vocational training diploma is required. In Viet Nam,¹⁴⁹ the legislation provides for a wage increase of at least 7 per cent, in relation to the regional minimum wage for workers who have undergone vocational training, including within an enterprise. In Tunisia,¹⁵⁰ specialized and skilled agricultural workers receive a technical skills bonus, which supplements the guaranteed SMAG.

161. Some countries have established a reduced minimum wage for the probationary period following a worker's recruitment. This is the case in Cambodia,¹⁵¹ Japan,¹⁵² Malaysia¹⁵³ and Viet Nam.¹⁵⁴ Conversely, in *Burkina Faso*¹⁵⁵ and Indonesia,¹⁵⁶ this

¹⁴² (4) s. 8; (6) s. 4(2).

¹⁴³ (3) ss 29 and 34–35.

¹⁴⁴ (6) ss 22–26; (7) ss 43–44 and 54–57.

¹⁴⁵ (21) s. 5(1.3)(4).

¹⁴⁶ (5) ss 4 and 18–19.

¹⁴⁷ (1) s. L.222-4.

¹⁴⁸ (7) s. 2.

¹⁴⁹ (2) s. 4(1)(b).

¹⁵⁰ (3) s. 2.

¹⁵¹ (3). The applicable rate is US\$56 rather than US\$61 per month, or a reduction of around 8 per cent.

¹⁵² (3) s. 7. No specific rate is fixed. It is calculated by multiplying the ordinary minimum wage by an index set out in an ordinance, which must take into account capacity for work and other circumstances. The application of any reduction must be approved by the competent authorities.

¹⁵³ (5) s. 5. The minimum wage may be reduced by a maximum of 30 per cent for the first six months of employment. The Government specifies in its report that this measure is intended to maintain employment opportunities for these workers, as employers may hesitate to recruit them because of their relatively limited professional experience.

¹⁵⁴ (1) s. 28. The wage paid must be equal to at least 85 per cent of the official minimum wage. The maximum probationary period is short: between six and 60 days, depending on the level of training required.

practice is strictly prohibited. This is also true in Togo,¹⁵⁷ where the basic minimum wage for the worker's occupational category, however, increases with seniority. In Cyprus,¹⁵⁸ the minimum wage in sectors covered by an order is fixed, under certain conditions, at a higher rate after six months' service in an enterprise. In Mauritius,¹⁵⁹ the minimum wage rates for certain occupational categories also vary according to length of service, while in Madagascar¹⁶⁰ a distinction is made between the starting minimum wage and the minimum wage for employees with some length of service.

162. In Cyprus, specific minimum wages have been set by order for occupational groups such as shop assistants, childcare workers and security guards. In Jamaica,¹⁶¹ a separate minimum wage has been fixed for security guards. According to information provided by the Government, this distinction has been made in view of the specialized nature of the work that they do, the risks they face at work and their working hours. In Canada, some provinces have established specific minimum wage rates for particular categories of workers. This is the case, for example, in British Columbia¹⁶² for resident live-in camp leaders and resident caretakers and in Ontario¹⁶³ for liquor servers. In Pakistan¹⁶⁴ and Peru,¹⁶⁵ a separate minimum wage has been set for journalists. The various categories of employees in press enterprises are also covered by specific wage boards in Bangladesh¹⁶⁶ and India.¹⁶⁷ Finally, in *Australia*¹⁶⁸ and *Seychelles*,¹⁶⁹ a higher minimum wage has been introduced for casual workers.

163. Legislation in a number of countries takes account of the particular situation of workers paid at a piece rate or by the task. The manner in which remuneration is calculated for each piece produced or task completed is of the utmost importance: if the salary is set too low, the workers concerned will work long hours, which is in fact the equivalent of performing unpaid overtime work. In order to avoid such a situation, the legislation of some countries, such as Canada (New Brunswick),¹⁷⁰ the Islamic Republic

¹⁵⁵ (1) s. 42.

¹⁵⁶ (2) s. 60(2).

¹⁵⁷ (6) ss 9 and 36. This increase is paid as a seniority bonus. The worker is entitled to an increase of 2 per cent after two years at the enterprise, and 1 per cent per year after the fourth year, up to a maximum of 30 per cent.

¹⁵⁸ (3) s. 3.

¹⁵⁹ This is the case for office workers, for example.

¹⁶⁰ (5).

¹⁶¹ (4).

¹⁶² (5) ss 16–17.

¹⁶³ (21) s. 5(1)(2).

¹⁶⁴ (4). In 2011, the Supreme Court of Pakistan confirmed the Seventh Wage Board Award, which had not been applied for ten years. The Eighth Wage Board was established in 2013.

¹⁶⁵ (8).

¹⁶⁶ The Eighth Wage Board for journalists and employees of the written press and press agencies has fixed the minimum wages for those workers in September 2013.

¹⁶⁷ (4) ss 9, 13B and 13C. Two wage boards were established in 2007, one for journalists and another for other newspaper employees. The Government accepted their recommendations in 2011, but an appeal has been lodged with the Supreme Court.

¹⁶⁸ (5) ss 5.1–5.2.

¹⁶⁹ (3) s. 3.

¹⁷⁰ (13) s. 5(2). See also Indonesia: (2) s. 157(3) and (3) s. 15; Philippines: (2) s. 124 and (5) s. 9; and Seychelles: (2) s. 41(2).

of Iran,¹⁷¹ Madagascar,¹⁷² and *Morocco*,¹⁷³ stipulates that pieceworkers' wages may not be lower than the applicable minimum wage. In other countries, such as India,¹⁷⁴ Pakistan¹⁷⁵ and *Sri Lanka*,¹⁷⁶ the legislation provides for the possibility of fixing specific minimum wage rates for pieceworkers, while specific minimum wages for these workers in the agricultural sector have been set in Canada (British Columbia).¹⁷⁷ In several French-speaking African countries, notably Côte d'Ivoire¹⁷⁸ and Gabon,¹⁷⁹ the remuneration for a job paid by the task or at a piece rate must be calculated in such a way that it gives a worker with average skills and normal output a salary at least equal to that of workers paid by time performing similar work. In Cambodia,¹⁸⁰ pieceworkers' wages must be fixed at a level that enables a wage earner with mediocre skills and normal output to receive, for the same length of work, a salary at least equal to the guaranteed minimum wage. In the Bolivarian Republic of Venezuela,¹⁸¹ the basis for calculating the wage fixed by the task or at a piece rate may not be lower than the corresponding basis for fixing the time-based remuneration for the same work. Legislation in the United Kingdom¹⁸² refers to the concept of "fair piece rates", which apply only where an employer cannot control a worker's hours of work, such as in the case of homeworkers.

Section 5. Minimum wages differentiated by other criteria

164. Convention No. 131 and Recommendation No. 135 make no provision for minimum wages to be fixed differently on the basis of criteria such as sex, age, nationality or any disability of a worker. As the Committee emphasized in paragraphs 169 and 176 of its 1992 General Survey on minimum wage fixing, the general principle of equal remuneration for work of equal value, set out in the Preamble of the ILO Constitution,¹⁸³ has to be observed, and the reasons that prompted the adoption of any lower rates based on such criteria should be re-examined regularly in light of that principle. Other ILO instruments, particularly Convention No. 100 and

¹⁷¹ (1) s. 43.

¹⁷² (2) s. 57.

¹⁷³ (1) s. 359.

¹⁷⁴ (1) s. 3(2).

¹⁷⁵ (2) s. 5(2).

¹⁷⁶ (1) ss 20(1) and 36.

¹⁷⁷ (5) s. 18.

¹⁷⁸ (1) s. 31(4). See also Mali: (1) s. L.98; Mauritania: (1) s. 198; and Togo: (2) s. 122.

¹⁷⁹ (1) s. 146.

¹⁸⁰ (1) s. 108.

¹⁸¹ (2) s. 114.

¹⁸² (2) ss 24–25. The employer must find out the average rate of work per hour (tasks or pieces completed) and divide it by 1.2, so that workers slightly less productive than average are not disadvantaged. The hourly minimum wage rate is then divided by that number, to work out the minimum rate that the employer must pay for each piece of work completed. See Low Pay Commission: *National minimum wage: Low Pay Commission – Report 2013*, paras 4.128–4.135. See also: <https://www.gov.uk/minimum-wage-different-types-work/paid-per-task-or-piece-of-work-done>.

¹⁸³ As a result of a translation error, the French text of the Constitution, unlike the English and Spanish versions, mistakenly refers to the principle of "equal pay for equal work".

Convention No. 111, also establish important rules that have an impact on minimum wage fixing.¹⁸⁴ Finally, the significant human rights Conventions adopted under the auspices of the United Nations underlying the principle of non-discrimination should be borne in mind.

1. Differentiation on grounds of sex

165. The practice of fixing different minimum wages for men and women is clearly tending to disappear around the world. The Committee recently noted with satisfaction that the Minimum Wage Order for agricultural workers in Grenada¹⁸⁵ no longer establishes different wage rates for men and women agricultural workers. However, the absence of differentiated minimum wage rates for men and women is not enough, as it is also necessary to eliminate any indirect discrimination. In *Sri Lanka*,¹⁸⁶ following the reactivation of wage boards, including for the tobacco and cinnamon industries, the Committee noted that the new wage rates are no longer differentiated by sex. It nevertheless emphasized that this is not sufficient to ensure that the process is free from gender bias and pointed out that, in defining different jobs and occupations in wage board ordinances, sex-specific terminology remains in use in many cases, reinforcing stereotypes regarding whether certain jobs should be carried out by men or women, and thus increasing the likelihood of wage inequality.

166. Different minimum wage rates for men and women still exist in Mauritius¹⁸⁷ in the remuneration orders published in 2012 for the tea industry, the salt industry and the sugar industry, where minimum wages for women are around 20 per cent lower than for men. This situation has, however, changed in other sectors. For example, the terms “male worker” and “female worker” are no longer used in the remuneration order for livestock workers. The relevant provisions refer to “farm worker grade I” and “farm worker grade II”. This issue could be resolved if, as it suggested in its report, the Government decided, in consultation with the social partners, to introduce a national minimum wage.

167. As the Committee emphasized in its 2012 General Survey on the fundamental Conventions,¹⁸⁸ as women predominate in low-wage employment, and a uniform national minimum wage system helps to raise the earnings of the lowest paid, it has an influence on the relationship between men’s and women’s wages and on reducing the

¹⁸⁴ Paragraph 2(a) of the Equal Remuneration Recommendation, 1951 (No. 90), calls for the application, as rapidly as practicable, of this principle in establishing minimum or other wage rates in industries and services where such rates are determined under public authority. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111), is broader in scope and aims to eliminate all discrimination in respect of employment and occupation, whether based on sex, race, colour, religion, political opinion, national extraction or social origin, or any other criterion determined by States parties to the Convention.

¹⁸⁵ Grenada – CEACR, Convention No. 100, observation, 2013.

¹⁸⁶ *Sri Lanka* – CEACR, Convention No. 100, observations, 2012 and 2013. The Committee noted, for example, that terms such as “chemical men” and “machine women” were used, as well as “bleaching operatives (males)” and “mending operatives (females)”, and should be avoided. It asked the Government to take steps to ensure that rates of wages fixed by the wage boards are based on objective criteria free from gender bias, so that the work in female-dominated sectors is not undervalued compared to male dominated sectors.

¹⁸⁷ Mauritius – CEACR, Convention No. 26, direct request, 2014; Mauritius – CEACR, Convention No. 100, direct request, 2010.

¹⁸⁸ See *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization – Giving globalization a human face*, 2008, Report III (Part 1B), International Labour Conference, 101st Session, 2012, paras 683 and 695. See also general observation on Convention No. 100, *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 96th Session, 2007, p. 271.

gender pay gap. However, when minimum wages are set at the sectoral or occupational levels, there is a tendency to set lower wages for sectors predominantly employing women.¹⁸⁹ *Due to such occupational segregation, the Committee emphasizes the need to ensure that, when setting minimum wages, certain skills considered to be “female” are not undervalued. Applying the principle of equal remuneration for work of equal value involves comparing jobs that are not necessarily identical but have the same “value”. In this regard, the Committee has repeatedly emphasized the need for jobs to be evaluated using an objective method that includes criteria such as skills, effort, responsibilities and working conditions.*¹⁹⁰

2. Different minimum wages for young workers

168. A number of countries recognize the principle of equal remuneration for work of equal value, with no distinction on grounds of age. This is the case in *Azerbaijan*,¹⁹¹ *Cameroon*,¹⁹² *Côte d’Ivoire*,¹⁹³ *Central African Republic*,¹⁹⁴ *Cuba*,¹⁹⁵ *Gabon*,¹⁹⁶ *Mali*,¹⁹⁷ *Romania*¹⁹⁸ and *Togo*.¹⁹⁹ In *Honduras*,²⁰⁰ the national legislation prohibits any age-related difference in wages and specifies that no wage classification may be based on the criterion of age. In *Seychelles*,²⁰¹ any employer who takes a decision, including with regard to wages, in which age is a factor may be the subject of a complaint by the worker concerned. Finally, *Georgia*,²⁰² the *Philippines*²⁰³ and *Timor-Leste*²⁰⁴ have

¹⁸⁹ In this regard, the Confederation of Private Sector Workers (CTSP) of Mauritius, referring to the transition from an agricultural to a service economy, emphasizes that women employed in the service sector (75 per cent of the total) are not covered by any regulation or collective agreement, so wage levels are the result of market forces. The CTSP denounces this state of affairs as constituting deliberate discrimination against women.

¹⁹⁰ See in particular: *Algeria* – CEACR, Convention No. 100, observation, 2013; *Argentina* – CEACR, Convention No. 100, observation, 2013; *Colombia* – CEACR, Convention No. 100, observation, 2013; *Honduras* – CEACR, Convention No. 100, observation, 2012; *India* – CEACR, Convention No. 100, observation, 2013; *Japan* – CEACR, Convention No. 100, observation, 2013; *Morocco* – CEACR, Convention No. 100, observation, 2012; *New Zealand* – CEACR, Convention No. 100, observation, 2012; *Philippines* – CEACR, Convention No. 100, observation, 2011; *Slovakia* – CEACR, Convention No. 100, observation, 2012; *Turkey* – CEACR, Convention No. 100, observation, 2013; *Ukraine* – CEACR, Convention No. 100, observation, 2011; and *Viet Nam* – CEACR, Convention No. 100, observation, 2012. On the objective appraisal of jobs, see in particular M. Oelz, S. Olney, M. Tomei: *Equal pay: An introductory guide* (Geneva, ILO, 2013).

¹⁹¹ (2) s. 253(1). Employees aged under 18 working half-time must receive the same wage as employees aged 18 or over for similar work.

¹⁹² (1) s. 61(2).

¹⁹³ (1) s. 31.2. The September 2010 initial draft amendment to the Labour Code provides, in s. 23.2, that young workers have the same rights as other workers in their occupational category and may not have their wages reduced or be assigned to a lower occupational category on grounds of their age under any circumstances.

¹⁹⁴ (1) s. 222.

¹⁹⁵ (1) s. 99.

¹⁹⁶ (1) s. 140.

¹⁹⁷ (1) s. L.95.

¹⁹⁸ (2) s. 159(3).

¹⁹⁹ (2) s. 118.

²⁰⁰ (2) s. 367(2); (3) s. 25(d). However, special authorization setting a specific minimum wage rate may be granted, especially in the case of workers whose capacity for work is reduced because of their advanced age; (3) s. 32.

²⁰¹ (2) s. 46A.

²⁰² (2) s. 2(3).

²⁰³ (2) s. 140.

established a more general prohibition on any form of discrimination in employment based on age.

169. In other States, the legislation specifically protects young workers from all forms of wage discrimination. In Benin,²⁰⁵ for example, workers aged 14 to 21 enjoy the same rights as other workers in their occupational category and may not have their wages reduced or be assigned to a lower occupational category on grounds of their age under any circumstances. In Mozambique,²⁰⁶ remuneration for an under-age worker must be fixed on the basis of the quantity and quality of the work performed and, in any event, may not be lower than the current minimum wage for the enterprise. In Peru,²⁰⁷ young workers may not receive remuneration that is lower than that paid to other workers of the same occupational category occupying a similar post. Similar provisions exist in Belarus,²⁰⁸ Ecuador²⁰⁹ and Niger.²¹⁰ In Latvia,²¹¹ the hourly minimum wage for workers under 18 has even been set at a higher level than the applicable rate for adult workers.

170. Nevertheless, a number of member States have decided to introduce lower minimum wage rates for young workers below a certain age, most often for reasons related to the implementation of employment policy and, more particularly, with efforts to combat youth unemployment.²¹² This problem affects all regions of the world and has worsened in recent years. According to the latest ILO report on youth employment,²¹³ the global youth unemployment rate was 12.6 per cent in 2013, or 73 million young people unemployed worldwide.

171. According to information provided by the Government of the United Kingdom, the introduction of different minimum wages is intended both to ensure that the relevant minimum wages do not encourage young people to interrupt their studies or training, thereby protecting their long-term interests, and to avoid restricting the opportunities available to young people wishing to enter the labour market. The Government of the *Netherlands* indicates that such a measure strikes a balance between two objectives of government policy, namely ensuring that young persons remain in education as long as possible and do not drop out of school without the necessary qualifications, and preserving and promoting employment for young persons who enter the labour market. According to the Government, if the minimum wage were higher for young workers,

²⁰⁴ (1) s. 6(2).

²⁰⁵ (2) s. 64.

²⁰⁶ (2) s. 27(3).

²⁰⁷ (6) s. 59.

²⁰⁸ (1) s. 42(2); (2) ss 273 and 279. The Constitution and the Labour Code guarantee equal remuneration for minor and adult workers. Moreover, remuneration for workers who are under 18 and who are employed for reduced working hours must be equal to the wage received by adult workers employed full-time in equivalent work.

²⁰⁹ (3) s. 89. Working adolescents enjoy all the rights provided for by labour legislation.

²¹⁰ (2) ss 5, 158 and 243(7). The Labour Code prohibits any discrimination based on age, including in setting wages, and also stipulates that extended collective agreements shall contain provisions on how to apply the principle of equal pay for work of equal value for young people.

²¹¹ (7) ss 2–3. The Labour Law provides that the monthly wage for adolescents employed in accordance with the working time prescribed for those under 18 shall not be less than the minimum monthly salary applicable to normal working time: (2) s. 63(1).

²¹² Appendix V contains a compilation of relevant national provisions.

²¹³ ILO: *Global employment trends for youth 2013: A generation at risk*, Geneva, 2013, p. 1. In this General Survey, unless stated otherwise, the data relate to people aged 15–24 years.

their wage costs would no longer correspond to their productivity and, consequently, the number of jobs available to them would be significantly reduced.²¹⁴

172. It should be noted that the age up to which young workers receive a lower minimum wage varies greatly. In Turkey,²¹⁵ for example, they are entitled to receive the full minimum wage from the age of 16 years. In the *Netherlands*,²¹⁶ a lower minimum wage, which varies depending on the worker's age, exists for workers aged between 15 and 22. In a large number of States, including Chad,²¹⁷ *Chile*,²¹⁸ *France*,²¹⁹ Luxembourg,²²⁰ *Malta*²²¹ and Mauritius,²²² workers are entitled to the full minimum wage from the age of 18, which in many cases corresponds to the age of majority.²²³ In the United Kingdom,²²⁴ the Equality Act prohibits discrimination on grounds of age, while providing that there is no discrimination if the difference in treatment on grounds of age serves as a proportionate means of achieving a legitimate aim and specifically stating that it is not prohibited to pay a young worker at a rate lower than that paid to an older worker if the hourly minimum wage for the young worker is lower than the hourly minimum wage for the other worker. The age at which the minimum wage for adult workers applies was changed from 22 to 21 years in 2010 on the recommendation of the Low Pay Commission. According to information sent by the Government, this decision was taken because studies had shown that the impact of such a measure on the employment of those aged 21 would be minimal, as the vast majority of them already received remuneration equal to, or greater than, the adult minimum wage rate.

²¹⁴ In its observations concerning the application of Convention No. 131, the Netherlands Trade Union Confederation (FNV) objected to the fact that young workers of 21 and 22 years of age are not entitled to the full adult minimum wage, considering that there are no objective reasons to justify the situation. In this regard, the FNV underlined the fact that the required age to receive the full minimum wage (23 years) is neither related to the legal age of majority (18 years), the definition of adulthood for financial matters or the end of parents' duty of maintenance (21 years). The FNV also pointed out that the Council of Europe's Committee of Social Rights had already ruled that the situation was not in conformity with the European Social Charter. Conversely, the Confederation of Netherlands Industry and Employers (VNO-NCW) and the IOE expressed their full support for the Government's views in this matter. See *Netherlands* – CEACR, Convention No. 131, observations, 2009 and 2013.

²¹⁵ (6) s. 3. See Turkey – CEACR, Convention No. 26, direct request, 2014. The Turkish Confederation of Employers' Associations (TISK) indicates in its comments that a reduced minimum wage rate should be established for young people under 20, so as to combat youth unemployment.

²¹⁶ (1) s. 7; (3) s. 2.

²¹⁷ (3) s. 46.

²¹⁸ For a critical analysis of the applicable provisions, see A. Marinakis, "Wage rigidity in Chile", *Cepal Review*, No. 90, December 2006, pp. 141–143. In its final report of June 2010, the Advisory Committee on Labour and the Minimum Wage expressed doubts as to the effectiveness of the policy of different minimum wage rates on the basis of age. See also *Chile* – CEACR, Convention No. 131, direct request, 2012.

²¹⁹ (1) s. D.3231-3.

²²⁰ (1) s. L.222-5.

²²¹ (3) Schedule.

²²² (3) First Schedule.

²²³ In Belgium, when a bill to abolish reductions for young people aged 18–20 was tabled, it was pointed out that, when reductions to the national minimum wage (average monthly guaranteed minimum income or RMMMIG) had been introduced for people under 21, that was the age of majority. However, reductions still applied up to the age of 21 even after the age of majority was reduced to 18 in 1990. See Belgian Senate, 2010–11 session, Bill to abolish the reduction in the average monthly guaranteed minimum income based on age, document 5-334/1.

²²⁴ (5) ss 4–5, 13(1)–(2) and Schedule 9, s. 11; (2) s. 13(1) and (1A). The Trade Union Congress (TUC), however, considers that the minimum wage for adults should apply from the age of 18.

173. When comparing the extent of the reductions, it can be seen that, for a worker aged 17, for example, they vary from around 6 per cent in Canada (Ontario)²²⁵ to 60.5 per cent in the *Netherlands*.²²⁶ The reduction is 42.2 per cent in *Australia*,²²⁷ 25 per cent in *Chile*,²²⁸ 10 per cent in *France*,²²⁹ 13 per cent in Greece,²³⁰ 30 per cent in Ireland,²³¹ around 41 per cent in the United Kingdom²³² and 20 per cent in Chad.²³³

174. In New Zealand, the relevant legislation has been amended several times in recent years. The new system, known as the “starting-out minimum wage”, has been in force since 1 May 2013.²³⁴ For people aged 16 or 17, the lower minimum wage rate now applies until they have worked for their employer for a continuous period of six months. This also covers those aged 18 or 19 who have received social benefits continuously for at least six months. The lower rate no longer applies after the first six months of continuous employment. The starting-out minimum wage also replaces the minimum wage for trainees under 20 years of age. The Human Rights Commission has expressed its opposition to the bill to introduce a starting-out minimum wage.²³⁵ It considers that such a system would be discriminatory, as it would mean that, within a group of workers performing the same work in the same place, some could be remunerated at a lower rate because of their age or, in certain cases, the fact that they had previously received social benefits. The Commission therefore considers that the minimum wage for people under 20 years of age should be set at the same level as for adults. Similarly, the New Zealand Council of Trade Unions has expressed doubt about the real impact of such a measure on reducing youth unemployment.

175. In a significant number of States, provisions fixing lower minimum wages for young workers have been repealed, or at least restricted in scope. In some cases, this has been specifically motivated by measures to combat discrimination. Such measures have

²²⁵ (21) s. 5(1.3).

²²⁶ (3) s. 2.

²²⁷ This figure applies to the national minimum wage; (5) s. 8.2. In its comments concerning the application of Convention No. 131, the Australian Council of Trade Unions (ACTU) expressed significant concern at the inadequacy of minimum wages for juniors, trainees and apprentices, taking into account the relative living standards, increases in the cost of living and the principle of equal pay for work of equal or comparable value. See *Australia* – CEACR, Convention No. 131, direct request, 2012.

²²⁸ (4) s. 1.

²²⁹ (1) s. D.3231-3.

²³⁰ (2) s. 1.

²³¹ (1) s. 14(b).

²³² (2) s. 13(1).

²³³ (3) s. 46.

²³⁴ (2) s. 4A; (3) s. 5. Previously, the minimum wage reduced by 20 per cent, which had applied to young workers aged 16 and 17 since 2001, was replaced in 2008 by a regime applicable to “new entrants”, the reduction remaining unchanged. “New entrants” were workers aged 16 or 17, except those who had been employed for three months or 200 hours (whichever was reached first) or who supervised or trained other workers. Workers who, under their contract of employment, had to undergo training in order to obtain the skills required for the job were also not considered to be new entrants. They received the training minimum wage. This legislative amendment was intended to remove any discrimination in employment based on age, in accordance with current human rights legislation, and the initial Bill was entitled “Draft amendment to the Minimum Wage Act (abolition of discrimination based on age)”.

²³⁵ Submission of the Human Rights Commission on the Minimum Wage (Starting-out Wage) Amendment Bill to the Transport and Industrial Relations Select Committee, 26 November 2012. The Commission also emphasized that the age of majority is well below 20 for criminal matters, and also for the rights to marry and to drive, yet these young people were not considered sufficiently adult to enjoy the minimum wage.

been taken in Argentina,²³⁶ Austria,²³⁷ Barbados,²³⁸ Belgium,²³⁹ Canada,²⁴⁰ Czech Republic,²⁴¹ *Republic of Korea*,²⁴² Hungary,²⁴³ Kenya,²⁴⁴ Morocco,²⁴⁵ Nepal,²⁴⁶ Slovakia,²⁴⁷ Spain,²⁴⁸ and *United Republic of Tanzania*.²⁴⁹

176. Some governments have introduced certain conditions on the application of lower minimum wage rates to young people, so as to take account of their qualifications or professional experience. In *France*,²⁵⁰ the reduction for people under 18 does not apply to workers with six months' professional experience in their branch of activity. In the United States,²⁵¹ the lower federal minimum wage rate only applies for the first

²³⁶ Lower minimum wage rates for young workers were abolished in 2008: (2) s. 119, as amended by Act No. 26.390 of 25 June 2008.

²³⁷ In April 2007, the Vienna Provincial High Court held that there was discrimination on the grounds of age under the collective agreement for the meat industry as it provided for different wage rates for shop assistants above 18 years of age in their first two years of work, and for trainees in the same job under the age of 18. See Austria – CEACR, Convention No. 111, direct request, 2010.

²³⁸ There have not been lower minimum wage rates for young shop assistants since 2004. See Barbados – CEACR, Convention No. 26, direct request, 2010. For the current provisions, see (7).

²³⁹ Three interoccupational collective agreements were concluded in March 2013 with a view to the progressive abolition, by 1 January 2015, of lower rates of the minimum guaranteed monthly wage (RMMM) for workers aged 18–20 who are covered by a contract of employment, with the exception of student contracts. See (9), as amended by collective labour agreements Nos 43 (12th) and 43 (13th) of 28 March 2013; and (10), as amended by collective labour agreement No. 50bis of 28 March 2013. Furthermore, according to the Government, although collective agreements establish a wage scale that varies with age for certain sectors, the social partners have progressively replaced the criterion of age with that of professional experience since 2008. See, for example, clause 7 of the collective labour agreement for chemical industry workers, concluded on 4 May 2011 by the Joint Committee for the Chemicals Industry, which refers to the 2011–12 national agreement, under which the collective labour agreement on the wage scale for young people, concluded on 7 November 2001, ceased to apply with effect from 1 June 2011.

²⁴⁰ In Quebec, reductions for workers under 18 were abolished following the adoption of the Quebec Charter of Human Rights and Freedoms. See D. Ledoux: *L'Histoire du salaire minimum au Québec: Regards sur le travail*, Vol. 7, No. 1, Autumn 2010, p. 16. Available at: <http://www.travail.gouv.qc.ca/>. Furthermore, according to the Government, lower minimum wage rates for young workers have been abolished in most provinces, except Ontario.

²⁴¹ (4) as amended by Regulation No. 246/2012 of 13 July 2012. Additionally, the bill banning discrimination is intended to cover both direct and indirect discrimination based, among other grounds, on age.

²⁴² Workers under 18 receive the full national minimum wage, following the revision of the Minimum Wage Act. See *Republic of Korea* – CEACR, Convention No. 131, direct request, 2009.

²⁴³ Following the amendment of the Labour Code in 2005, the provision that authorized the Minister of Labour to fix minimum wages at a level lower than the compulsory minimum wage, particularly for young workers, in the interest of promoting employment, was repealed. See Hungary – CEACR, Convention No. 26, direct request, 2008. The Government also stated, in the report submitted for the General Survey, that it had decided not to introduce minimum wage rates differentiated by age after studying the incentive effect that such a measure would have on employment, along with other measures targeting young people.

²⁴⁴ The Government abolished lower minimum wage rates for workers under 18 in 2002 in the context of measures to eradicate child labour. See *Kenya* – CEACR, Convention No. 131, direct request, 2004.

²⁴⁵ See *Morocco* – CEACR, Convention No. 26, direct request, 2008.

²⁴⁶ See the 2013 Order fixing the minimum wage for workers in sectors other than tea plantations.

²⁴⁷ (3). See Slovakia – CEACR, Convention No. 26, direct request, 2013. According to information from the Government, this reform was adopted under the legislation on equality of treatment and the protection against discrimination.

²⁴⁸ Young workers have received the same minimum wage as other workers since 1998. See *Spain* – CEACR, Convention No. 131, observation, 2000.

²⁴⁹ See *United Republic of Tanzania* – CEACR, Convention No. 131, direct request, 2013.

²⁵⁰ (1) s. D.3231-3.

²⁵¹ (1) s. 6(g)(1).

90 consecutive calendar days following recruitment. In Chad,²⁵² it does not apply to people who hold a vocational aptitude certificate or who have passed the final exam of a centre for accelerated vocational training. In other countries, targeted measures have been adopted for workers with limited professional experience, without reference to the age of the workers concerned. In Poland,²⁵³ for instance, the minimum wage applies to all workers. However, they may receive remuneration equal to 80 per cent of the minimum wage during their first year of employment. In Canada (Nova Scotia),²⁵⁴ so-called “inexperienced” workers, that is those with less than three calendar months’ experience of the work being performed, either with the same or another employer, may be employed for three months at a lower minimum wage rate. In British Columbia, the law used to provide for a lower minimum wage for workers with fewer than 500 hours of paid professional experience. However, this was abolished in 2011 and all workers are now entitled to the ordinary minimum wage.

177. As the Committee pointed out in its 1992 General Survey on minimum wage fixing, the question should be raised as to the extent to which the fixing of lower minimum wage rates for young workers based solely on the criterion of age may lead to situations which are not in compliance with the principle of equal remuneration for work of equal value. Similarly, consideration should be given to the situation of older workers, who also frequently encounter difficulties in finding employment. It has been shown that young and older people have the lowest activity rates.²⁵⁵

178. Rather than using the criterion of age, it might be preferable to take account of the qualifications and experience of the workers concerned.²⁵⁶ The Conference Committee on the Application of Standards adopted this viewpoint when it examined the application of Convention No. 26 by New Zealand,²⁵⁷ which had introduced a lower minimum wage for workers under 20. The Government representative of New Zealand had emphasized the need to ensure a balance between preventing young workers from being exploited and the possible negative effects of a minimum wage on their employment opportunities, taking into account the obstacles they face in that regard as a result, for example, of their lack of experience and the higher training component in their work. Recalling the general principle of equal remuneration for work of equal value set out in the Preamble of the ILO Constitution, the Conference Committee nevertheless requested the Government to retain factors not based on age, but on objective criteria such as the quantity and quality of work performed. It should also be recalled that, in accordance

²⁵² (3) s. 46.

²⁵³ (3) s. 6(2). Until this provision was amended in 2005, they could also be remunerated at 90 per cent of the minimum wage during their second year of employment. The Constitutional Court ruled that such a measure was not contrary to the constitutional principle of equality. Referring in particular to Convention No. 131, the Constitutional Court, however, considered that the minimum wage fixed under this Act did not correspond to the real needs of workers and their families, but this issue was not included in the submission to the Court. See ruling K 31/03 of 10 January 2005.

²⁵⁴ (18) ss 3(1) and 6(3). As of 1 April 2013, the hourly minimum wage for inexperienced workers is 50 cents less than the minimum wage for experienced workers.

²⁵⁵ ILO: *Employment and social protection in the new demographic context*, Report IV, International Labour Conference, 102nd Session, Geneva, 2013, para. 51.

²⁵⁶ On this point, see, for example, article 19 of the Quebec Charter of Human Rights and Freedoms: “Every employer must, without discrimination, grant equal salary or wages to the members of his personnel who perform equivalent work at the same place. A difference in salary or wages based on experience, seniority, years of service, merit, productivity or overtime is not considered discriminatory if such criteria are common to all members of the personnel. ...”

²⁵⁷ ILO: *Record of Proceedings*, International Labour Conference, 86th Session, Geneva, 1998, pp. 18/64–18/66.

with the Minimum Age Recommendation, 1973 (No. 146),²⁵⁸ special attention should be given to providing children who may be employed under Article 7(3) of the Minimum Age Convention, 1973 (No. 138), with fair remuneration and its protection, bearing in mind the principle of equal pay for equal work.

179. As the International Labour Conference indicated in the resolution entitled *The youth unemployment crisis: A call for action*, adopted in 2012,²⁵⁹ numerous other measures can be taken at national level to promote youth employment. The Conference considered in this regard that there is no “one-size-fits-all” approach and that a multi-pronged approach is needed. It emphasized that there are important linkages between labour market policies, active and passive, and minimum wage policies, in countries with minimum wages, and that it is important that those elements be taken into account and be mutually supportive in encouraging work opportunities for young people. According to the resolution, the existence of minimum wages can be effective in preventing abusive and discriminatory pay practices and improving the purchasing power of young workers, and social dialogue at the national level is essential in developing a coherent and consistent wage-policy framework which offers adequate protection and improves the employment prospects of young workers. With regard to government action, the Conference considered that governments should give serious consideration, as appropriate, to a number of measures, including: adopting a rights-based approach to youth employment; ensuring that young people receive equal treatment and are afforded rights at work; and ensuring that minimum wages set either by law or by collective agreement for young workers are observed.

3. Different minimum wages for apprentices and trainee workers

180. Although there is no single and commonly accepted definition of apprenticeship, it may be considered to cover “those forms of Initial Vocational Education and Training (IVET) that formally combine and alternate company-based training (periods of practical work experience at a workplace) with school-based education (periods of theoretical/practical education followed in a school or training centre), and whose successful completion leads to well and nationally recognized IVET certification degrees”²⁶⁰ Such programmes, which are intended to increase the relevance of young people’s skills to labour market requirements, are naturally of particular interest in the current climate of massive youth unemployment. It must be ensured, however, that the young people concerned enjoy sufficient protection. In this regard, the G20 labour and employment ministers undertook in May 2012 to promote and, when necessary, strengthen quality apprenticeship systems that ensure a high level of instruction and adequate remuneration and avoid taking advantage of lower salaries.²⁶¹

²⁵⁸ Para. 13(1)(a). This Paragraph refers to the provisions of Convention No. 138 allowing children to be employed, in principle from the age of 13, on light work.

²⁵⁹ Paras 13, 29, 47 and 48.

²⁶⁰ European Commission: *Apprenticeship supply in the Member States of the European Union: Final report*, Luxembourg, 2012, p. 22.

²⁶¹ G20 Labour and Employment Ministers’ Conclusions, Guadalajara (Mexico), May 2012, para. 20. See also ILO: *Overview of apprenticeship systems and issues*, ILO contribution to the G20 Task Force on Employment, Nov. 2012.

181. The legislation of some countries provides that apprentices are entitled to remuneration equal to the minimum wage. This is the case in the Dominican Republic,²⁶² Honduras,²⁶³ Spain²⁶⁴ and the *Syrian Arab Republic*.²⁶⁵ In *Slovenia*,²⁶⁶ apprentices are entitled to a wage equal to 70 per cent of the base wage for the post or type of post for which they are being trained but, in no event, lower than the legal minimum wage. In the majority of countries, however, the national legislation provides for apprentices to be paid a specific remuneration or indemnity, which is often expressed as a percentage of the applicable minimum wage, for example 90 per cent in Bulgaria,²⁶⁷ 60 per cent in Paraguay²⁶⁸ and 75 per cent in the Philippines.²⁶⁹

182. In some cases, the right of apprentices to receive remuneration at least equal to the minimum wage is recognized after a certain period. This is the case in *El Salvador*,²⁷⁰ Mali²⁷¹ and *Portugal*.²⁷² In the Bolivarian Republic of Venezuela,²⁷³ remuneration for adolescent apprentices is lower than the minimum wage for adult workers. However, if they perform their work under the same conditions as other workers, they must receive the minimum wage that applies to adults. In some countries, such as Algeria,²⁷⁴ Belgium,²⁷⁵ Colombia,²⁷⁶ France,²⁷⁷ Gabon,²⁷⁸ Pakistan²⁷⁹ and Tunisia,²⁸⁰ the

²⁶² (1) s. 257.

²⁶³ (4) s. 132.

²⁶⁴ (2) s. 11(2)(g).

²⁶⁵ (1) s. 39.

²⁶⁶ (1) s. 140.

²⁶⁷ (2) s. 230(4).

²⁶⁸ (2) s. 105.

²⁶⁹ (2) s. 61; (5) s. 10. The Secretary of Labor and Employment may authorize the hiring of apprentices without compensation whose training on the job is required by the school or training programme curriculum, or is necessary for their final exams: (2) s. 72. In Chad, apprentices aged from 14 to 18 may not receive a wage lower than 80 per cent of the minimum wage for their job: (4) s. 7. In Turkey, apprentices receive remuneration equal to 30 per cent of the minimum wage: (3) s. 25.

²⁷⁰ (2) s. 69. Apprentices receive remuneration which may not be lower than 50 per cent of the minimum wage for the first year of their apprenticeship, 75 per cent of the minimum wage for the second year and which must be equal to the statutory minimum wage from the third year. In Jordan, the legislation stipulates that an intern's wage during the last phase of an internship may not be lower than the minimum wage applicable for equivalent work: (1) s. 37; (2) s. 6.

²⁷¹ (2) s. D.7-8. Apprentices receive an allowance equal to 100 per cent of the SMIG during the third year of their apprenticeship. The figure is 25 per cent for the first year and 50 per cent for the second year.

²⁷² (2) s. 275(1)(a), (2) and (3). Apprentices receive 80 per cent of the guaranteed monthly minimum wage. However, this different wage rate only applies for a period of 12 months, including the time spent training with the employer, and is reduced to six months if the apprentice has already undertaken vocational training or obtained an occupational qualification related to the job.

²⁷³ (3) s. 1.

²⁷⁴ (2) s. 16; (3) ss 12–13. For a period of six to 12 months, apprentices receive a pre-wage, paid by the State, corresponding to 15 per cent of the SNMG. After this period, they receive a progressive pre-wage, paid by the employer, of between 30 and 80 per cent of the SNMG.

²⁷⁵ (12) s. 25; (13) s. 3(a)–(b). Apprentices are paid a maximum monthly compensation for apprenticeship corresponding to a percentage of the national guaranteed average minimum monthly income (RMMMMG) which varies depending on the age of the apprentice. Apprentices aged under 21 receive 50 per cent of the RMMMMG. For younger apprentices, the amount of the apprenticeship compensation increases progressively, with the minimum, which applies to apprentices aged 15, fixed at 64 per cent of the compensation received by apprentices aged 21.

²⁷⁶ (4) s. 30; (5) s. 1. Apprentices receive monthly remuneration that does not, under any circumstances, constitute a wage, but which corresponds to 50 per cent of the current monthly minimum wage for the theoretical education phase and 75 per cent of the minimum wage for the practical training phase. However, an apprentice's

remuneration of apprentices varies according to their age, level of training or level of progress in the apprenticeship programme.

183. In a number of countries, such as the Bahamas,²⁸¹ India,²⁸² *Republic of Korea*²⁸³ and Luxembourg,²⁸⁴ the legislation leaves it to the competent authority to determine the minimum remuneration of apprentices. In other countries, representatives of employers' and workers' organizations participate in setting the remuneration of apprentices. In Gambia,²⁸⁵ it is the responsibility of the joint industrial councils to fix the minimum terms and conditions of employment of apprentices. In Israel,²⁸⁶ their remuneration may not be lower than the minimum wage fixed by the Apprentices' Wage Committee, in a resolution valid for one year, but varies depending on the apprentice's progress, the minimum rate and the mode of payment of the wage. Finally, in *Uruguay*,²⁸⁷ wage councils are responsible for regulating apprenticeships for people under 18, taking into account the provisions of the Children's Code.

184. Some countries rely on the will of the parties to determine remuneration levels for apprentices. This is the case in *Guatemala*,²⁸⁸ *Madagascar*,²⁸⁹ *Morocco*²⁹⁰ and *Mozambique*.²⁹¹ In Switzerland,²⁹² unless a collective agreement provides otherwise, the remuneration of apprentices must be set out in the apprenticeship contract. Finally,

remuneration may not be less than 100 per cent of the current statutory minimum wage if the apprentice is a university student or if the unemployment rate in the country is less than 10 per cent.

²⁷⁷ (1) ss L.6222-27 and D.6222-26.

²⁷⁸ (1) s. 85. Apprentices are entitled, during their training, to an allowance amounting to 25 per cent of the SMIG for the first year and 50 per cent of the SMIG for the second year.

²⁷⁹ (5) s. 24(1). The wages of apprentices, whether weekly or monthly, may not be lower than a percentage calculated on the basis of the minimum wage applicable to skilled workers in the sector concerned, which is fixed depending on how far through the training cycle they are. The apprenticeship period is thus divided into five parts, with increasing rates of remuneration. Wages for apprentices vary from 40 per cent of the sectoral minimum wage for the first fifth of the apprenticeship to 80 per cent of the sectoral minimum wage for the last fifth.

²⁸⁰ (1) s. 345(7); (4) s. 1. Compensation for apprenticeship may not be lower than 30 per cent of the guaranteed minimum wage for the first three months of training and 80 per cent of this wage after 15 months.

²⁸¹ (3) s. 20.

²⁸² (1) s. 3(3)(a)(iii).

²⁸³ (3) s. 5(2)(1). A different minimum wage rate may be fixed, by presidential decree, for apprentices during the first three months of their apprenticeship contract.

²⁸⁴ (1) s. L.111-11.

²⁸⁵ (1) s. 111(2).

²⁸⁶ (3) s. 15.

²⁸⁷ (3) s. 16.

²⁸⁸ (2) s. 170. The legislation expressly provides that the remuneration of apprentices, which is agreed between the apprentice and the employer, may be lower than the minimum wage.

²⁸⁹ (2) s. 34.

²⁹⁰ (2) s. 8. The monthly allowance paid to an apprentice may be less than the minimum wage for the sector in question.

²⁹¹ (2) s. 249(2).

²⁹² (2) s. 344a. In practice, however, the social partners in each sector issue non-binding wage recommendations for employers and workers in the sector concerned. See, for example, the recommendation by the Swiss Society of Commercial Employees (SEC Switzerland) for 2012–13, the recommendation on compensation for trainees issued in 2013 by Suissetec (the Switzerland and Lichtenstein Building Techniques Association) or the recommendation on apprentices' monthly remuneration issued in 2012 by the Employers' Association of the Swiss Watch Industry.

remuneration is sometimes excluded by apprenticeship contracts. In Mauritania,²⁹³ apprentices are not paid if they are employed only in work required by their training and only for the time needed for that training.

185. In a number of countries, various programmes have also been introduced to help people into work, particularly young persons, by combining employment and training outside an apprenticeship framework. In Italy,²⁹⁴ for example, beneficiaries of employment access contracts receive remuneration that may not be lower than the wage fixed in the national collective agreement for the sector concerned for jobs two grades on the wage scale below the post they occupy. In Mozambique,²⁹⁵ a person who has recently obtained a vocational qualification must receive, during the internship undertaken once they have obtained the qualification, pay equal to at least 75 per cent of the remuneration determined for the relevant occupational category. However, if the individual was already employed, the pay must be equal to the amount they received previously, if the remuneration due for the internship would be lower. In France,²⁹⁶ vocational training contracts are alternative contracts aimed at enabling the workers concerned to acquire certain qualifications and to help them to join or return to the labour market. Unless agreements or contracts contain more favourable provisions, employees aged under 26 years of age receive a minimum wage calculated on the basis of their age and level of training during the training contract period. For employees aged 26 or over, pay may not be lower than the agreed minimum interoccupational wage, nor less than 85 per cent of the minimum remuneration established by the collective agreement for the branch in which the enterprise or its employees work.

186. The legislation in Argentina²⁹⁷ authorizes apprentices to be paid below the minimum wage. However, the use of apprenticeship contracts is closely regulated. In particular, they must be intended to provide theoretical and practical training, which must be precisely described as part of a programme of the same length as the contract. The contract must be concluded in writing between an employer and an unemployed young person aged between 16 and 28. It must last from three months to one year. Persons who have previously been in an employment relationship with the same employer cannot be engaged as apprentices, and a new apprenticeship contract cannot be concluded when the first expires. In addition, the legislation limits the number of apprentices on the basis of the number of workers employed on permanent contracts at the same establishment. In 2008, the Government also introduced a new legal regime to regulate internships, with a view to better monitoring the respective practices and preventing the fraudulent use of internships. An intern must receive an allowance, which does not constitute remuneration and which is calculated on a pro rata basis using the

²⁹³ (1) s. 405(1)–(4). However, if the employer draws “profit from the apprentice’s work in such a way that it exceeds a reasonable assessment of the efforts and constraints associated with the apprenticeship”, then the apprentice should be paid at a rate that may be lower than the SMIG, taking into account the advantages that the apprentice gains from being taught a trade, on the one hand, and the efforts and constraints that this instruction represents for the master, on the other.

²⁹⁴ (3) ss 54(1) and 59. The following are covered by this contract: young workers aged 18–29 years; the long-term unemployed aged 29–32; the unemployed aged over 50; people who have been inactive for two years or more and who wish to rejoin the labour market; women, of any age, living in an area where employment rates for women are at least 20 per cent lower than for men or the unemployment rate is 10 per cent higher than for men; and people living with a physical, psychological or mental disability.

²⁹⁵ (2) s. 116(2)–(3).

²⁹⁶ (1) ss L.6325-1 to L.6325-22, and D.6325-1 to D.6325-21. Vocational training contracts are open to people aged 16–25 years for the purpose of completing initial training, and also to jobseekers aged 26 or over and those who receive certain social benefits. See *France* – CEACR, Convention No. 131, direct request, 2012.

²⁹⁷ (2) s. 119; (10) s. 1; (11) ss 12, 15 and 19.

basic wage established by the applicable collective agreement or, in the absence thereof, the indexed minimum subsistence wage. It is explicitly provided that an intern may not be recruited to occupy a vacant or a new job, nor to replace staff members in the enterprise or entity concerned. If an employer fails to respect the legal requirements under either an apprenticeship contract or an internship contract, the contract becomes a permanent contract of employment.

187. The Committee is fully cognizant, however, that problems have been raised in several countries relating to unpaid internship programmes and other similar arrangements, when they are used to evade the payment of applicable minimum wages and to curtail employment opportunities. In the United States, for instance, an unpaid internship is only lawful in the context of an educational training programme when the intern does not displace regular employees, works under close supervision, and the employer derives no immediate advantage from the intern's activities. If the employer would have hired additional employees or required existing staff to work additional hours had the intern not performed the work, then the intern will be viewed as an employee and be entitled to compensation under the Fair Labour Standards Act.²⁹⁸

188. ***Recalling the overarching principle of equal pay for work of equal value, the Committee considers that persons covered by apprenticeship or traineeship contracts should only be paid at a differentiated rate where they receive actual training during working hours at the workplace. In general, the quantity and quality of the work performed should be the decisive factors in determining the wage paid.*** In this regard, the Committee recalls the resolution entitled *The youth employment crisis: A call to action*,²⁹⁹ adopted by the International Labour Conference at its 2012 session, to which it has already referred. In this resolution, the Conference emphasized that “Education, training and lifelong learning foster a virtuous cycle of improved employability, higher productivity, income growth and development.” The implementation of quality programmes to enhance skills, particularly for young people, is therefore to be welcomed. However, as the Conference also highlighted, “such mechanisms can run the risk, in some cases, of being used as a way of obtaining cheap labour or replacing existing workers”. In that context, the Conference particularly encouraged governments to “[regulate and monitor] apprenticeship, internship and other work-experience schemes, including through certification, to ensure they allow for a real learning experience and do not replace regular workers”.

4. Different minimum wages for migrant workers

189. The labour legislation in several countries explicitly prohibits any discrimination on grounds of nationality. This is the case, for example, in Chad,³⁰⁰ Georgia,³⁰¹ Kazakhstan,³⁰² Kenya,³⁰³ Timor-Leste,³⁰⁴ Togo³⁰⁵ and Bolivarian Republic of

²⁹⁸ In a recent judicial decision, in June 2013, in *Glatt v. Fox Searchlight Pictures, Inc.*, 2013 WL 2495140 (S.D.N.Y. 2013), a US federal district court held that two unpaid interns who worked on the production of a movie were owed back pay under federal and state wage and hour laws. See also US Department of Labor: *Fact Sheet No. 71 – Internship programs under the Fair Labor Standards Act*. Similar criteria are used in Canada and the United Kingdom to define the nature and scope of authorized unpaid internships and have been applied by national courts in relevant litigation.

²⁹⁹ Paras 23–24 and 26. See also *El Salvador – CEACR*, Convention No. 131, direct request, 2012; *Ecuador – CEACR*, Convention No. 131, direct request, 2012.

³⁰⁰ (2) s. 6.

³⁰¹ (2) s. 2(3).

³⁰² (2) s. 7(2).

³⁰³ (4) s. 5(3)(a)–(b).

Venezuela.³⁰⁶ Equality of remuneration may even be a condition for granting a work permit. In Switzerland,³⁰⁷ for instance, under the Federal Act on foreign nationals, a foreign national may not be admitted in the country for paid employment unless the usual wage and employment conditions for the location, profession and sector are complied with.

190. In some countries, however, differences have been observed between national and migrant workers in the determination of minimum wages. In Seychelles,³⁰⁸ a 2008 ordinance that excluded non-national workers in the tourism and construction sectors from the national minimum wage was repealed in 2010. The overall increase in wages ordered the same year, however, set a clearly lower rate of increase for non-national workers than for nationals. In Jordan,³⁰⁹ the minimum wage was last increased in December 2011. However, the decision explicitly excluded foreign workers from the increase, with the minimum wage rate fixed in 2008 remaining in force for them. Reference may also be made to the fact that, in 2013, the Government of Saudi Arabia³¹⁰ introduced a wage protection programme mainly intended to increase substantially the number of nationals employed in private enterprises. In order for a Saudi worker to be taken into account in the new points system, he must receive a monthly wage of no less than 3,000 Saudi riyals (SAR) (around US\$800). This constitutes a de facto minimum wage applicable solely to nationals. By way of comparison, in 2012, the Government introduced a minimum wage range of SAR600–800 (approximately US\$160–210) that applies only to foreign domestic workers. In Malaysia, the minimum wage rates established in 2012 apply to migrant workers. However, employers are authorized to deduct the levy on employing migrant workers from their wages, which in practice results in a reduced minimum wage for these workers. A deduction may also be made for accommodation costs.³¹¹ This point raises the question of benefits in kind being taken into account in the minimum wage, to which the Committee referred in Chapter I.

191. The Committee recalls in this regard that the United Nations International Covenant on Economic, Social and Cultural Rights³¹² proclaims the right of everyone to the enjoyment of just and favourable conditions of work, including fair wages and equal remuneration for work of equal value without distinction of any kind. In its General Comment No. 20 on non-discrimination in economic, social and cultural rights, the United Nations Committee on Economic, Social and Cultural Rights emphasized that the ground of nationality should not bar access to Covenant rights.³¹³ In addition, Article 25,

³⁰⁴ (1) s. 6.

³⁰⁵ (2) s. 118.

³⁰⁶ (2) s. 21.

³⁰⁷ (4) s. 22.

³⁰⁸ (6) s. 3. For the majority of Seychelles workers, the wage increase of 2010 was 20 per cent, while for non-nationals, it was 8.33 per cent (subsequently reduced to 5.88 per cent by an amendment in December 2010). See Seychelles – CEACR, Convention No. 26, direct request, 2013.

³⁰⁹ (2). See also ILO: *Decent Work Country Programme, Jordan, 2012–15*, 2012, pp. 11–12.

³¹⁰ See S. Khoja and N. Aljoaid: *Nitaqat: 18 months on*, Clyde & Co., Legal updates, 2013.

³¹¹ In addition, the application of the Minimum Wages Order to migrant workers has been deferred in certain circumstances: see (7) s. 2. However, employers who are allowed to defer application of the minimum wage cannot deduct the levy. Moreover, minimum wages do not apply to domestic workers, who are predominantly migrant workers: (5) s. 3. See Ministry of Human Resources: *Minimum wage policy*, 15 March 2013.

³¹² Article 7(a)(i).

³¹³ See document E/C.12/GC/20 of 2 July 2009, para. 30.

paragraph 1, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families recognizes the right of all migrant workers to enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration.

192. Furthermore, the ILO Multilateral Framework on Labour Migration,³¹⁴ adopted by the International Labour Conference in 2006, confirms that all international labour standards apply to migrant workers, unless stated otherwise, and makes explicit reference to Convention No. 131. Moreover, under Article 6 of the Migration for Employment Convention (Revised), 1949 (No. 97),³¹⁵ countries that ratify the Convention have to apply to immigrants lawfully within their territory treatment no less favourable than that which they apply to their own nationals in respect of remuneration, in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities. In November 2003, the ILO Governing Body approved the report of the tripartite committee set up to examine the representation made under article 24 of the ILO Constitution, alleging that China had violated Article 6 of Convention No. 97 in the Hong Kong Special Administrative Region, China.³¹⁶ The Governing Body considered that levying a specific tax on the employers of all workers recruited from abroad, including domestic workers, whose wages were already the lowest among migrant workers, while at the same time reducing the relevant minimum allowable wage by the same amount would not be equitable. It urged the Government to review the levy and its minimum wage policies on foreign migrant workers, especially foreign domestic workers, taking into account the requirements of Article 6 of Convention No. 97, and the principles of equity and proportionality.³¹⁷

193. The above considerations relate to the regulation of minimum wages in so-called host countries, where migrant workers are employed. At the same time, a number of countries of origin, including Ethiopia, India, Indonesia, *Nepal* and Philippines, have fixed a minimum wage for their nationals employed abroad as migrant workers and prohibit placement agencies from recruiting workers for employment at a lower wage in the host countries concerned. In some cases, these decisions have been followed by negotiations with the authorities of host countries to conclude agreements on the applicable minimum wages. However, such negotiations risk introducing competition between countries of origin to ensure employment for their nationals abroad³¹⁸ and at

³¹⁴ Para. 9(a), (c) and Note 6, Annex I.

³¹⁵ Moreover, by virtue of Article 10 of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), States parties to the Convention undertake to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation for persons who as migrant workers or as members of their families are lawfully within their territory.

³¹⁶ Report of the Committee set up to examine the representation alleging non-observance by the Hong Kong Special Administrative Region, China of the Migration for Employment Convention (Revised), 1949 (No. 97), made under article 24 of the ILO Constitution by the Trade Union Congress of the Philippines (TUCP). The Hong Kong, China administration had decided, among other matters, to reduce the minimum wage for foreign domestic workers by 400 Hong Kong dollars (HKD) a month from April 2003, corresponding to a reduction of 11 per cent in the minimum allowable wage, while salaries for civil servants in the Hong Kong Special Administrative Region, China had only been reduced by 6 per cent, and only as of 2004 and 2005. Moreover, a retraining levy of an equal amount was imposed on those employing foreign workers as of 1 October 2003.

³¹⁷ Paras 44 and 45(d) of the report of the Committee set up to examine the representation. The Governing Body's conclusions are being followed up by the Committee of Experts. See China (Hong Kong Special Administrative Region) – CEACR, Convention No. 97, observation, 2013.

³¹⁸ This issue is of fundamental importance for a number of countries of origin, bearing in mind the importance of remittances sent by migrant workers to their families. On this subject, see: <http://siteresources.worldbank.org/INTLAC/Resources/Factbook2011-Ebook.pdf>. The non-governmental organization "Migrant Forum Asia" advocates the conclusion of an agreement between countries of origin on a "reference wage", which

the same time giving rise to discrimination between migrant workers on grounds of nationality. A draft model contract ensuring a number of rights for migrant domestic workers in the region is currently under discussion within the Gulf Cooperation Council (GCC), and could be adopted in 2014. This contract does not, however, provide for a regional minimum wage to be introduced for domestic migrant workers. Consequently, its effectiveness will be conditional on the success of negotiations by countries of origin to impose a single minimum wage. It should be noted in this regard that Bangladesh, India, *Nepal* and *Sri Lanka* decided, at a consultation meeting for South-East Asia on the Domestic Workers Convention, 2011 (No. 189), organized by the Office in June 2012, to establish a common reference wage for their nationals employed as domestic migrant workers.

5. Different minimum wages for workers with disabilities

194. In a number of ILO member States, the labour legislation establishes a general prohibition on any discrimination on grounds of disability. This is the case, for example, in Gabon,³¹⁹ Georgia,³²⁰ *Niger*,³²¹ Timor-Leste,³²² Bolivarian Republic of Venezuela³²³ and Viet Nam.³²⁴ In *Cuba*,³²⁵ the principle of “equal pay for equal work” is guaranteed for workers with disabilities. In Belgium,³²⁶ a national collective agreement explicitly guarantees workers with disabilities remuneration equivalent to the remuneration fixed by one or more collective labour agreements concluded at the interoccupational, sectoral or enterprise levels and/or by common practice that applies in the occupational category to which the disabled worker belongs. In Luxembourg,³²⁷ the wage of a worker with disabilities may not be lower than that resulting from the application of provisions contained in laws, regulations or agreements. In *Nicaragua*,³²⁸ the State shall guarantee workers with disabilities the same working conditions as those

in practice would be a skills-related wage spectrum for migrant workers in various occupations. See Migrant Forum Asia: *A reference wage for migrant domestic workers*, Policy Brief No. 3, 2012. It promotes this idea mainly within the framework of the work of the Abu Dhabi Dialogue, which since 2008 has brought together 11 Asian States that are countries of origin for migration labour (Afghanistan, Bangladesh, China, India, Indonesia, *Nepal*, Pakistan, Philippines, *Sri Lanka*, Thailand and Viet Nam, which themselves meet at the ministerial consultation group known as the Colombo Process) and nine destination countries (the six member States of the Gulf Cooperation Council – Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates – as well as Malaysia, Singapore and *Yemen*). This Dialogue is intended to find mutually beneficial solutions for migrant workers, their employers, and countries of origin and destination. One of its priorities is the implementation of measures to protect migrant workers and prevent them from being abused. See Abu Dhabi Declaration, January 2008, point II.1.

³¹⁹ (1) s. 179.

³²⁰ (2) s. 2(3).

³²¹ (2) s. 5.

³²² (1) s. 6(2).

³²³ (2) s. 21.

³²⁴ (1) s. 8(1).

³²⁵ (6) s. 3(d).

³²⁶ (14) s. 1.

³²⁷ (1) s. L.562-6. In addition, a worker with disabilities employed in a protected workshop receives the legal minimum wage at the hourly rate, multiplied by the number of working hours in the contract. These wages are paid in full by the State: (1) s. L.563-5(1).

³²⁸ (5) s. 34.

of other workers. Finally, in *Romania*,³²⁹ any discrimination in fixing and paying wages based on disability is prohibited.

195. In a number of countries, however, lower minimum wage rates are or may be set for workers with disabilities. In *Australia*,³³⁰ the National Minimum Wage Order fixes several special minimum wages. The special minimum wage for employees with a disability that does not affect their productivity is equal to the national minimum wage. With respect to employees with a disability who are unable to perform the range of duties required for the class of work and who meet the criteria for receiving a disability pension, the applicable special minimum wage is a percentage of the national minimum wage corresponding to the percentage of their capacity for work, subject to an absolute minimum. In *Israel*,³³¹ the Minister of Labour may, with the approval of the Knesset Labour and Social Affairs Committee, issue regulations prescribing a minimum wage rate lower than the legal minimum wage for workers with physical, psychological or mental disabilities employed in protected undertakings. In *Uruguay*,³³² wage councils may take into account, in fixing wages, special situations resulting from the restricted physical or mental capacity of certain workers at an industrial or commercial establishment, briefly justifying the difference in situation. Finally, in the *Philippines*,³³³ remuneration paid to workers with disabilities may not be less than 75 per cent of the legal minimum wage. The legislation in other countries allows the worker with disabilities and the employer to request special authorization or a permit from the competent authority for the worker to be paid less than the minimum wage in force. These provisions will be examined in Chapter VII of the General Survey, in the section on the compulsory nature of minimum wages.

196. The Committee recalls that the principle of equality of opportunity and treatment for disabled and other workers is laid down in the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), and the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168). Paragraph 10 of Recommendation No. 168 provides that measures should be taken to promote employment opportunities for disabled persons which conform to the employment and salary standards applicable to the workers generally. Furthermore, the 2006 United Nations Convention on the Rights of Persons with Disabilities provides in Article 27 that States parties shall safeguard and promote the realization of the right of persons with disabilities to work. They shall take steps to protect the right of persons with disabilities to enjoy, on an equal basis with others, just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value. It is certainly in this context that measures have been taken by the governments of several countries, including *Argentina*,³³⁴ *Czech Republic*,³³⁵ *France*,³³⁶ *New Zealand*³³⁷ and *Slovakia*³³⁸ to abolish lower minimum wage rates for workers with disabilities.

³²⁹ (2) s. 159(3).

³³⁰ (5) ss 6–7 and Annex A.

³³¹ (1) s. 17.

³³² (3) s. 16. See also *Uruguay* – CEACR, Convention No. 131, direct request, 2013.

³³³ (2) s. 80(2); (5) s. 10.

³³⁴ (2) s. 119, as amended in 2008.

³³⁵ (4) as amended by Regulation No. 246/2012 Coll. The lower wage rates previously applicable to workers with disabilities were abolished as of 1 January 2013.

³³⁶ (1) s. L.5213-7. See also *France* – CEACR, Convention No. 131, observation, 2008.

Conclusion

197. As the Committee mentioned at the beginning of this chapter, neither Convention No. 131 nor Recommendation No. 135 contain provisions requiring member States either to establish a single minimum wage at the national level or to introduce a system based on sectoral minimum wages. At most, Paragraph 5 of Recommendation No. 135 allows for the possibility of fixing different rates of minimum wages in different regions or zones to allow for differences in the cost of living. It is for the tripartite constituents to determine, in each State, the minimum wage system which best suits the national context, for example, taking account of productivity differentials between sectors, potentially significant differences in the cost of living between rural and urban areas, and in the light of objectives such as reducing income inequality, combating poverty and preserving fair competition.

198. *A number of considerations may, however, prove useful in deliberating upon these issues. While a system based on a single minimum wage may have the disadvantage of not reflecting the payment capacities of all employers across the country, it has the advantage of simplicity, which makes it easier for employers and workers to know the minimum wage rate applicable to a particular employment relationship, and for the labour inspection services to enforce the relevant provisions. On the contrary, the more complex a minimum wage system is, and the more sectoral, occupational and geographical rates it involves, the more difficult it is to monitor, particularly in countries where the labour administration services have very limited resources.* Some States have chosen to rationalize their minimum wage systems. For instance, in 1987, *Costa Rica* had 520 different minimum wage rates. Following successive reforms, this number has gradually been reduced to 19.³³⁹ In *India*, as has been seen, minimum wages are fixed centrally for 45 occupational categories and at state level for 1,679. The central Government has taken a number of steps to improve the coherence of the system, including creating regional advisory committees and introducing a bill to make the national minimum wage compulsory.

199. *Moreover, whatever system is chosen at the national level, it needs to ensure respect for the principle of equal remuneration for work of equal value. Difficulties are particularly likely to arise in this regard if minimum wages are fixed by sector or occupational category, bearing in mind the risk of undervaluing work predominantly performed by women. The need to comply with this principle has also been noted in relation to young and trainee workers, as well as migrant workers and persons with disabilities.* In this regard, the Committee recalls that the Discrimination (Employment and Occupation) Convention, 1958 (No. 111),³⁴⁰ requires the implementation of a

³³⁷ The Minimum Wage Amendment Act 2007 removed the blanket exemptions from the minimum wage for persons with disabilities and now allows for exemptions only on an individual basis. See *New Zealand – CEACR*, Convention No. 26, observation, 2008.

³³⁸ (3). Under previous legislation, a worker with disabilities receiving a partial disability pension was entitled to 75 per cent of the statutory minimum wage, while a worker receiving a disability pension or a worker with disabilities aged under 18 received 50 per cent of the minimum wage. See *Slovakia – CEACR*, Convention No. 26, direct request, 2013.

³³⁹ T.H. Gindling and K. Terrell: *Minimum wages, inequality and globalization*, IZA Discussion paper No. 1160, Bonn, May 2004, p. 4.

³⁴⁰ Age, nationality and disability are not among the grounds of discrimination explicitly prohibited by Convention No. 111. However, if these grounds of discrimination are specified by a member State, the Committee includes them in its supervision of the application of the Convention, by virtue of Article 1(1)(b). With regard to migrant workers, they must in any case enjoy the same protection as other workers from discrimination on any of the grounds listed in Convention No. 111, such as race, colour or national extraction.

national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, or any other criteria specified by member States. In accordance with the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), this policy should in particular take full account of the principle that all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of remuneration for work of equal value. As the Committee emphasized in paragraph 649 of its 2012 General Survey on the fundamental Conventions, “[e]quality and non-discrimination in employment and occupation is a fundamental principle and human right to which all women and men are entitled, in all countries and in all societies. It impacts on the enjoyment of all other rights.”

Chapter V

Consultation and participation of the social partners and other actors

200. As the Committee has already emphasized, the principle of the full consultation and participation, on a basis of equality, of the social partners in the establishment and operation of minimum wage systems is one of the pillars of Convention No. 131 and Recommendation No. 135. This principle had already been set out in Convention No. 26 and Convention No. 99.¹

201. Convention No. 131 and Recommendation No. 135 also refer to participation by persons representing the general interests of the country in the operation of minimum wage fixing machinery. Conventions Nos 26 and 99, for their part, provide for consultation with persons specially qualified for the purpose by their trade or functions, whom the competent authority deems it expedient to consult.² Recommendation No. 30 also calls for wage-fixing bodies to include independent persons whose votes can ensure effective decisions being reached in the event of the votes of the employers' and workers' representatives being equally divided.³

¹ Articles 2 and 3 of Convention No. 26; Article 3 of Convention No. 99. These provisions are supplemented by the Minimum Wage-Fixing Machinery Recommendation, 1928 (No. 30), (Part II, Paragraph 2), and the Minimum Wage-Fixing Machinery (Agriculture) Recommendation, 1951 (No. 89), (Paragraphs 3–5). In one of the reports prepared by the Office for the 1967 Meeting of Experts, it was suggested that consideration be given to the possibility of making the provisions concerning the role of the employers and the workers or their representatives in fixing minimum wages clearer and more precise; see 1967 Meeting of Experts, Report II, paras 31–40. In their conclusions, the experts emphasized the importance of allowing the social partners to make their views known, because they are the groups most affected by minimum wage fixing decisions and have knowledge of the needs of workers and the conditions of the industry or industries concerned. The experts also pointed out that a minimum wage is more likely to be acceptable if it has been arrived at through a process of discussion. The experts concluded that, in all cases, it is desirable to provide for consultation with employers' and workers' organizations or, where such organizations do not exist, with competent representatives of the employers and workers concerned. Moreover, where there exist bodies responsible for applying minimum wage regulations, the participation of representatives of employers' and workers' organizations or, where such organizations do not exist, of competent representatives of the employers and workers concerned should be assured; see *Report of the 1967 Meeting of Experts*, paras 75 and 114–115.

² Article 3(2)(1) of Convention No. 26 and Article 3(2) of Convention No. 99.

³ The 1967 Meeting of Experts envisaged the role of such persons to be to help resolve divergences in the positions of employers' and workers' representatives, to advise on economic and social problems, and to represent the general interest in so far as that interest is wider than the interests of the employers and the workers or different from them; see *Report of the 1967 Meeting of Experts*, para. 119.

Section 1. Consultation and participation of employers' and workers' organizations

1. General remarks

202. Under the terms of Article 4(2) of Convention No. 131, provision shall be made, in connection with the establishment, operation and modification of minimum wage fixing machinery, for full consultation with representative organizations of employers and workers concerned or, where no such organizations exist, representatives of the employers and workers concerned.⁴ As the Committee emphasized in its 1992 General Survey on minimum wages (paragraph 188), this obligation of consultation stems from the tripartite structure that characterizes the ILO. In its 2000 General Survey on tripartite consultation, the Committee sought to specify the meaning of consultation, which implies more than mere information, without signifying that the social partners are associated with a joint decision-making process. As the Committee emphasized, “consultation must also be distinguished from ‘negotiation’, which implies initiatives taken by parties with differing or conflicting interests with a view to reaching an agreement. The consultations required under the terms of the Convention are intended, rather than leading to an agreement, to assist the competent authority in taking a decision.”⁵

203. *To meet the requirements of Convention No. 131, consultations with the social partners have to meet certain requirements. The Convention insists that employers' and workers' organizations have to be fully consulted.⁶ This should not be a mere formality by governmental authorities, but steps should be taken to ensure that the authorities really take into account the concerns and arguments put forward by the social partners to inform their decision-making, including taking into account both the needs of workers and economic realities in fixing minimum wages.⁷ This implies that consultation must take place before decisions are taken and that the representatives of the employers' and workers' organizations concerned should be provided with full and pertinent information in order to reach their opinion.* In this regard, it should be noted that Paragraph 7 of Recommendation No. 135 provides for the social partners to be consulted on the collection of data and the carrying out of studies for the information of minimum wage fixing authorities.

204. With regard to the matters on which consultations are to be held, Article 1(2) of Convention No. 131 requires the competent authorities to reach agreement with the representative organizations of employers and workers concerned, where such exist, or at least in full consultation with them, when determining the groups of wage earners to

⁴ During the first Conference discussion, the Committee on Minimum Wage adopted a provision calling for consultation with employers' and workers' representatives in the establishment and modification of minimum wage fixing machinery as well as in its operation, although only the latter had been mentioned in the original Office proposal; see ILC: *Record of Proceedings*, 53rd Session, Geneva, 1969, p. 681, para. 37.

⁵ *Tripartite consultation – General Survey concerning the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152)*, International Labour Conference, Report III (Part 1B), 88th Session, 2000, para. 29. See also Seychelles – CEACR, Convention No. 26, direct request, 2013; Bolivarian Republic of Venezuela – CEACR, Convention No. 26, observation, 2013.

⁶ This qualification was added during the second Conference discussion, following the adoption of an amendment proposed by the Worker members on the grounds that too often consultation with employers' and workers' organizations was perfunctory; see ILC: *Record of Proceedings*, 54th Session, Geneva, 1970, p. 381, para. 38.

⁷ On this subject, see in particular *Republic of Moldova – CEACR, Convention No. 131, direct request, 2013*.

be covered by minimum wage systems. Clearly, this obligation only applies where certain categories of workers or employers are excluded from the scope of minimum wage provisions. As noted in Chapter II, Convention No. 131 also requires the provision of information, in the first reports on its application, on any such exclusions. However, the majority of States parties to the Convention have not provided this information, even where their national legislation provides for such exclusions, and those that have done so, giving the reasons for the exclusions, have seldom provided information on the prior consultations carried out in this regard.

205. Recommendation No. 135 calls for other matters to be included in consultation: the selection and application of the criteria for determining the level of minimum wages;⁸ the rate or rates of minimum wages to be fixed; the adjustment from time to time of the rate or rates of minimum wages; and problems encountered in the enforcement of minimum wage legislation. In Chapter III, the Committee examined the role entrusted to employers' and workers' organizations under the legislation of the various member States on the fixing and adjustment of minimum wages. Very few national laws explicitly provide for these organizations to be consulted in determining the criteria to be used for this purpose, such as that of *Burkina Faso*⁹ and *Niger*,¹⁰ where the duties of the Labour Advisory Board include examining criteria that could serve as a basis for determining and adjusting the minimum wage. In other countries, recent changes to the criteria for fixing minimum wages have been the subject of tripartite discussions. In *Costa Rica*, the National Wage Council, a tripartite body, adopted a new methodology for use in this regard in 2011, including criteria established for this purpose. In *Latvia*, the adoption in 2011 of the new method of fixing the minimum wage was preceded by discussions in the National Tripartite Cooperation Council.

206. The consultation of employers' and workers' organizations is not the only requirement set out in Convention No. 131. Under Article 4(3), provision shall also be made, wherever it is appropriate to the nature of the minimum wage fixing machinery, for the direct participation in its operation of representatives of organizations of employers and workers concerned or, where no such organizations exist, representatives of employers and workers concerned, on a basis of equality. Paragraph 8 of Recommendation No. 135 also provides that, in countries in which bodies have been set up which advise the competent authority on minimum wage questions, or to which the government has delegated responsibility for minimum wage decisions, the participation in the operation of minimum wage fixing machinery set out in Convention No. 131 should include membership of such bodies. The notion of participation implies both a greater role for the social partners in the operation of minimum wage fixing systems and direct collaboration between them and the public authorities.¹¹

207. Convention No. 131 and Recommendation No. 135 allow broad flexibility in terms of the form that is to be taken by the consultation and participation of employers' and workers' organizations, as reflected in the variety of mechanisms introduced at national level, which are described in Chapter III. Consultations may be held in a specially created committee for ILO questions, a body with general competence for economic and

⁸ The reference to the consultation of the social partners on the selection of criteria, and not only their application, was introduced during the second Conference discussion, following the adoption of an amendment proposed by the Employer members and supported by the Worker members; see ILC: *Record of Proceedings*, 54th Session, Geneva, 1970, p. 383, paras 58–59.

⁹ (1) s. 408.

¹⁰ (2) s. 260.

¹¹ *General Survey of 1992 on minimum wages*, paras 192–193.

social affairs or labour matters, or specialized bodies such as wage councils. It is also possible to hold consultations through written communications, provided that the conditions referred to above are met. Similarly, representatives of employers' and workers' organizations may participate in the operation of minimum wage fixing machinery through advisory or decision-making bodies. Finally, it is clear that minimum wage fixing systems based on collective bargaining, such as those in Austria, Belgium, Italy and Sweden, naturally involve direct participation by the social partners.

2. Representativity of employers' and workers' organizations

208. Article 4 of Convention No. 131 provides for both full consultation with representative organizations of employers and workers concerned, and the participation of representatives of employers' and workers' organizations.¹² The reference to employers' and workers' organizations "concerned" is particularly justified where the national system is based on separate minimum wages for different groups of wage earners, such as sectoral minimum wages. With regard to the representativity of organizations, it should be noted that, unlike Convention No. 99 (Article 3(3)), Convention No. 131 does not only refer to "the most representative" organizations.¹³ In any case, the criteria to be applied in determining the representative status of the organizations concerned have to be "objective, pre-established and precise so as to avoid any opportunity for partiality or abuse. Furthermore, such determination should be carried out in accordance with a procedure that offers every guarantee of impartiality, by an independent body that enjoys the confidence of the parties, and without political interference."¹⁴

209. In a number of countries, only the most representative organizations of employers and workers participate in the operation of minimum wage systems. This is the case for the composition of the National Labour Council in *Albania*,¹⁵ Belgium¹⁶ and Benin,¹⁷ and the CNTPE in Peru.¹⁸ Similarly, in *Burkina Faso*¹⁹ and *Niger*,²⁰ the most

¹² Article 4(2) and (3). In both cases, in the absence of such organizations, representatives of the employers and workers concerned may be consulted or participate in the operation of minimum wage fixing machinery. Article 1(2) of the Convention also refers to representative organizations of employers and workers concerned for the determination of the groups of wage earners to be covered.

¹³ The 1967 Meeting of Experts pointed out, in this regard, that criteria for selecting employers' and workers' representatives vary from country to country; some countries limit participation to the most representative organizations concerned, while others provide for the participation of representatives of the different organizations of employers and workers concerned. The experts concluded that it would be desirable to have flexible criteria on the subject; see *Report of the 1967 Meeting of Experts*, paras 116–117.

¹⁴ ILO: *Giving globalization a human face – General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*, International Labour Conference, Report III (Part 1B), 101st Session, 2012, para. 228.

¹⁵ (2) s. 200(5).

¹⁶ (15) s. 2. The Act specifies the distribution of membership of the most representative employers' organizations between those persons put forward by: the most representative employers' organization operating at the national level and representing an absolute majority of employers in the industrial, trade and services sectors, provided that the majority of workers are also represented; the Higher Council for Self-employed Workers and Small and Medium-Sized Enterprises; the most representative employers' organizations representing employers in agriculture; and the most representative organization of employers that operates at the national level and represents employers in the non-commercial sector. The Act also sets criteria for identifying the most representative workers' organizations, specifying that membership for these organizations shall be distributed among them by an order discussed at the Council of Ministers.

¹⁷ (1) s. 287.

¹⁸ (4) s. 4(1).

representative employers' and workers' organizations designate representatives to serve on the national advisory labour commission, while in Mauritius²¹ these organizations are consulted before the Minister of Labour appoints employers' and workers' representatives to the National Wage Council.

210. In Colombia,²² the employer representatives on the Standing Consultative Commission on Wage and Labour Policies are designated by the most representative employers' organizations in the country's various economic sectors, in accordance with weighting rules designed to reflect the importance of each sector for gross domestic product (GDP) and job creation. The Commission also includes three delegates designated by the most representative trade union confederations – their representativity being assessed on the basis of the number of members they have when the election is held – along with one member from one of the two most representative confederations of retirees, and one from one of the most representative associations of the unemployed. In Turkey,²³ the Minimum Wage Determination Committee includes representatives of those employers' and workers' organizations with the most members.

211. In some cases, the legislation designates by name the organizations called upon to participate in fixing minimum wages. This is the case in *France*²⁴ for the employers' and workers' organizations that propose members for the National Collective Bargaining Commission, in *Portugal*²⁵ for the organizations represented on the Standing Committee for Social Dialogue, in the Czech Republic²⁶ for the organizations that sit on the Council of Economic and Social Agreement in plenary session, and in Viet Nam²⁷ for those represented on the National Wage Council. In Poland,²⁸ the legislation also indicates by name those employers' and workers' organizations that are considered representative and whose representatives participate in the Tripartite Commission for Socio-economic Affairs.

212. Legal requirements sometimes differ depending on whether they apply to employers' or workers' organizations. In Argentina, for example, employer representatives on the National Council for Employment, Productivity and the Minimum Living Wage are nominated at the proposal of the most representative organizations,

¹⁹ (1) s. 405.

²⁰ (2) s. 259.

²¹ (1) s. 90(5).

²² (3) s. 5.

²³ (2) s. 39. The Committee asked the Government to specify whether, and how, smaller workers' and employers' organizations were associated in the operation of the minimum wage fixing machinery. See Turkey – CEACR, Convention No. 26, direct request, 2013.

²⁴ (1) ss R.2272-2 and R.2272-3.

²⁵ (3) s. 9(2); (4) s. 7(1).

²⁶ (3) s. 4(2) and (4), and Annexes 1–3. The worker group is made up of six representatives of the Czech–Moravian Confederation of Trade Unions (ČMKOS) and one worker member representing another workers' organization that meets the representativity criteria. The employer group comprises seven representatives designated by the Confederation of Industry and Transport and the Confederation of Employers' and Entrepreneurs' Associations. If other trade union or employer organizations meet the representativity criteria established by law, the Council would have to discuss their participation in plenary.

²⁷ (1) s. 92; (6) s. 5.

²⁸ (4) ss 6–7.

while worker representatives are nominated at the proposal of the workers' federation that enjoys *personería gremial* (trade union status).²⁹

213. The legislation in other countries makes more general provision for the participation of employers' and workers' representatives. In *Serbia*,³⁰ for example, the organizations represented on the Economic and Social Council are determined in proportion to their number of members. In *Gambia*,³¹ the legislation only sets representativity rules for trade union representatives on joint industry councils: any union that can demonstrate that its membership accounts for at least 25 per cent of workers in at least three categories of employees covered by a particular council is entitled to have at least one representative on that council. In *Indonesia*,³² any candidate to represent workers on a wage council must be nominated by a trade union that fulfils the representativity conditions set by law, while candidates to represent employers must be nominated by employers' organizations that meet the relevant criteria. Finally, in *Slovenia*,³³ every representative workers' organization or confederation designates at least one member of the Economic and Social Council, while employer representatives are nominated by employers' organizations operating at the national level.

3. Participation of organizations in the designation of their representatives

214. Recommendations Nos 30 and 89 explicitly indicate that, in order to ensure that the employers' and workers' representatives shall be persons having the confidence of those whose interests they respectively represent, the employers and workers concerned should be given a voice as far as is practicable in the circumstances in the selection of their representatives, and if any organizations of the employers and workers exist these should in any case be invited to submit names of persons recommended by them for appointment on the wage-fixing body.³⁴ Such a measure is intended to allow appointed representatives to ensure the confidence of those they represent and to secure greater authority for the minimum wages fixed.³⁵ As the Committee emphasized in its 1992 General Survey on minimum wages (paragraph 210), the principle of the participation of the organizations concerned in the appointment of their representatives on minimum wage fixing bodies is guaranteed by the provisions of Convention No. 131.

215. In several countries, employers' and workers' organizations are responsible for nominating or designating their representatives to participate in the operation of minimum wage fixing machinery. Representatives of employers' and workers' organizations are nominated or designated by their respective organizations in *Bulgaria*³⁶ (National Council for Tripartite Cooperation), *El Salvador*³⁷ (National

²⁹ (3) s. 136. On the issues raised by the restriction of certain rights to organizations that enjoy trade union status, see, in particular, *Argentina – CEACR*, Convention No. 87, observation, 2013.

³⁰ (2) s. 5.

³¹ (1) s. 110(4)–(6). Moreover, no union may have more than three times the number of representatives of any other union represented on the council.

³² (4) ss 13, 30 and 47.

³³ (3) s. 4.

³⁴ Part II, Paragraph 2(b), of Recommendation No. 30 and Paragraph 5 of Recommendation No. 89.

³⁵ See the preparatory work for Conventions Nos 26 and 99, cited in the *General Survey of 1992 on minimum wages*, para. 209, note 24.

³⁶ (2) s. 3a(2).

Minimum Wage Council), the Russian Federation³⁸ (Russian Tripartite Commission for the Regulation of Social and Labour Relations) and Thailand³⁹ (Committee for the Protection of Home Work).

216. In South Africa,⁴⁰ the Minister of Labour must appoint to the Employment Conditions Commission one member nominated by the voting members of the National Economic Development and Labour Council (NEDLAC) representing organized labour, and one member nominated by the voting members of NEDLAC representing organized business. In Colombia,⁴¹ five members of the Standing Consultative Commission for Wage and Labour Policies are designated by the most representative employers' organizations in the country's various economic sectors: three members are designated by the most representative trade union confederations; one representative of retirees is drawn from one of the two most representative confederations of retirees (alternating between the two); and one representative of unemployed workers is drawn from one of the two most representative associations of the unemployed (also alternating). Finally, in *Malta*,⁴² representatives of the social partners on the Employment Relations Board are nominated by the Malta Council for Economic and Social Development from among the representative organizations of employers and workers that sit on the Council.

217. In other countries, representatives of employers' and workers' organizations are appointed by a public authority on the proposal of, or following consultation with, the organizations in question. In Argentina,⁴³ representatives of private sector employers on the National Council for Employment, Productivity and the Indexed Minimum Living Wage (CNEPSMVM) are appointed upon the proposal of the most representative employers' organizations, while worker representatives are appointed upon the proposal of the workers' federation that enjoys trade union status (*personería gremial*). In *Albania*,⁴⁴ *Benin*⁴⁵ and *Burundi*,⁴⁶ the Government decides on the appointment of employer and worker members to the National Labour Council on the basis of proposals made by the most representative occupational organizations. In Honduras,⁴⁷ the employer and worker members of minimum wage commissions are also appointed upon the proposal of the representative employers' and workers' organizations in the sector concerned. This is also the case in *Cameroon*⁴⁸ for members of the National Labour

³⁷ (2) s. 149(4).

³⁸ (4) s. 2.

³⁹ (4) s. 25(4)–(5). This rule also applies in Peru for the appointment of employer and worker members to the National Tripartite Council for Labour and Employment Promotion (CNTPE), with the legislation specifying that the social partners have to endeavour to achieve a balance between men and women in the appointment of their respective representatives: (4) s. 4(1)–(2). This is also the case in *Burkina Faso* ((1) s. 405) and *Niger* ((2) s. 259): the legislation in these two countries also provides for the members of the bodies concerned to be appointed by the minister responsible for labour if there are no organizations that can be considered representative. The same is true in *Namibia*: (1) s. 107(b).

⁴⁰ (1) s. 60(2).

⁴¹ (3) s. 5.

⁴² (2) s. 3(2).

⁴³ (3) s. 136.

⁴⁴ (2) s. 200(7).

⁴⁵ (1) s. 287.

⁴⁶ (1) s. 248. This is also the case in *Senegal*: (1) s. L.206.

⁴⁷ (3) s. 15.

⁴⁸ (1) s. 119.

Advisory Board, the *Republic of Korea*⁴⁹ for the employer and worker members of the MWC, *France*⁵⁰ for members of the National Collective Bargaining Commission, *Indonesia*⁵¹ for members of the National Wage Council and wage councils at the provincial, district and municipal levels, and *Mauritius*⁵² for the members of the National Tripartite Remuneration Council.

218. In the Philippines,⁵³ the worker and employer members of regional wage and productivity boards are appointed by the President on the recommendation of the Secretary of State for Labour and Employment, based on lists proposed by employers' and workers' organizations. In Belgium,⁵⁴ the employer members of the National Labour Council are appointed by the King on the basis of a double list of candidates submitted by the most representative organizations of the industrial, service, agricultural, trade, crafts and non-commercial sectors. A certain number of these candidates must represent small and medium-sized enterprises and family enterprises. The worker members are also appointed by the King, on the basis of a double list of candidates submitted by the most representative workers' organizations. With regard to joint commissions, the organizations concerned are invited to indicate whether they wish to be represented and, if so, to demonstrate their representativity. The minister then decides which organizations will be represented and determines the number of members that each will have. Organizations thus designated are invited to present two candidates for each seat they have been allocated, and the members are appointed by the minister. In *Costa Rica*,⁵⁵ the Ministry of Labour and Social Welfare publishes a notice in the official journal inviting employers' and workers' organizations to submit a list of ten names with a view to forming the National Wage Council. The Government then appoints the members of the Council freely, three for each group. A similar procedure applies in *Guatemala*.⁵⁶

219. It is rare for legislation to provide for the representatives of employers' and workers' organizations to be designated by the national authorities without giving the organizations represented a specific role in the process. In some provinces of Canada,⁵⁷ members of the bodies that participate in fixing minimum wages are appointed by the competent authorities. This is also the case in *Gambia*⁵⁸ for members of joint industry councils, in *Thailand*⁵⁹ for the members of the Remuneration Committee and in *Viet Nam*⁶⁰ for the members of the National Wage Council.

⁴⁹ (4) s. 12.

⁵⁰ (1) ss R.2272-2 and R.2272-3.

⁵¹ (2) s. 98; (4) ss 13, 30 and 47.

⁵² (1) s. 90(5).

⁵³ (2) s. 122.

⁵⁴ (15) s. 2; (2) ss 39 and 42.

⁵⁵ (3) ss 4 and 6.

⁵⁶ (3) s. 7.

⁵⁷ Manitoba: (7) s. 7(1); New Brunswick: (12) s. 47(1); Nova Scotia: (16) s. 51; Prince Edward Island: (6) s. 4(1); Yukon: (30) s. 94(2).

⁵⁸ (1) s. 110(4).

⁵⁹ (1) s. 78.

⁶⁰ (6) s. 5(2).

4. Participation of employers' and workers' organizations on an equal footing

220. Article 4(3)(a) of Convention No. 131 calls for representatives of employers' and workers' organizations to participate in the operation of minimum wage fixing machinery on a basis of equality. In accordance with this rule, employers' and workers' organizations have equal numbers of representatives in a large number of countries, such as Argentina,⁶¹ Belgium,⁶² Bulgaria,⁶³ Ecuador,⁶⁴ India,⁶⁵ Republic of Korea,⁶⁶ Malta,⁶⁷ Niger,⁶⁸ Panama,⁶⁹ Turkey,⁷⁰ Uruguay⁷¹ and Viet Nam.⁷²

221. In other countries, the legislation does not require numerical equality of employer and worker representatives, but provides for other measures to ensure that their points of view are equally taken into account. In Nicaragua,⁷³ the National Minimum Wage Commission includes one representative of each national trade union federation or confederation, along with one representative of each nationally representative employers' organization. In order to be legally valid, resolutions of the Commission fixing minimum wages must be signed by one worker representative, one employer representative and the Minister of Labour. However, if the three parties cannot reach agreement within 30 days of the Commission being formed, a resolution is valid if signed by two of the three parties. In Peru,⁷⁴ the CNTPE consists of a maximum of ten employer and ten worker representatives. Quorum is reached if, for each party represented on the Council, a majority of members plus one is present, and the plenary adopts decisions by consensus among the three parties.

⁶¹ (3) s. 136.

⁶² National Labour Council: (15) ss 2(2) and 5bis. Joint committees: (2) ss 39 and 47.

⁶³ (2) s. 3(a)(2).

⁶⁴ (2) s. 118.

⁶⁵ (1) ss 8(2) and 9.

⁶⁶ (3) s. 14.

⁶⁷ (2) s. 3(2).

⁶⁸ (2) s. 259.

⁶⁹ (4) s. 1, as amended by s. 1 of Executive Decree No. 151 of 23 Aug. 2012.

⁷⁰ (2) s. 39.

⁷¹ National minimum wage: (2) s. 8.

⁷² (1) s. 92; (6) s. 5. This is also the case in *Albania*: (2) s. 200(4); *Antigua and Barbuda*: (1) ss C21(3) and C22(2); *Benin*: (1) s. 287; *Burkina Faso*: (1) s. 405; *Burundi*: (1) s. 247; *Cameroon*: (1) s. 119; *Central African Republic*: (3) s. 4; *Costa Rica*: (3) s. 4; *Czech Republic*: (3) s. 4(2); *El Salvador*: (2) s. 149(1); *France*: (1) s. R.2272-1(5); *Gambia*: (1) s. 110(4)(a); *Guatemala*: (2) s. 105 and (3) s. 5; *Honduras*: (3) s. 15; *Indonesia*: (2) s. 98(2) and (4) ss 6, 23 and 40; *Japan*: (3) s. 22; *Jordan*: (1) s. 52A; *Lithuania*: (2) s. 45(1); *Mauritius*: (1) s. 90(2); *Montenegro*: (3) s. 13; *Nepal*: (1) s. 21(2) and (2) s. 9; *Philippines*: (2) s. 122; *Poland*: (4) ss 9(1) and 10; *Senegal*: (1) ss L.206 and L.85; *South Africa*: (1) ss 60(2); and *Thailand*: (1) ss 78 and 82(2).

⁷³ (2) ss 7 and 11.

⁷⁴ (4) ss 4(2), and 12–13. In the Russian Federation, the legislation does not require the same number of employer and worker members on the Russian Tripartite Commission for the Regulation of Social and Labour Relations. However, the decisions of the Commission are only adopted if they are supported by the three parties represented; (4) s. 5. In *Slovenia*, irrespective of the number of members of the Economic and Social Council, each party has one vote and decisions are taken unanimously; (3) s. 9. Finally, in *Sri Lanka*, if the number of wages board members representing employers is not the same as the number representing workers, the majority group has to identify the member(s) who will abstain from voting at the meeting, so as to ensure that both parties have the same number of voting members; (1) s. 11(2).

5. Consultation and participation of the social partners in practice

222. The legislative provisions referred to above and in Chapter III do not provide any information on the genuine nature of consultations held with the social partners, or on possible difficulties encountered in terms of their participation in the operation of minimum wage systems. Even though this is a fundamental principle for the implementation of the Convention, it has to be noted that, in their comments, many employers' and workers' organizations report problems in the practical application of this principle at the national level. The Committee itself has commented on this question with regard to a number of member States that have ratified Convention No. 131 or one of the earlier Conventions on the subject. In some countries, as seen in Chapter III, minimum wages are fixed by the government, without the legislation providing for the consultation of employers' and workers' organizations. In these cases, it is clear that the principle of consultation and participation of the social partners on a basis of equality is not respected.⁷⁵

223. However, even in countries where this principle is set out in the national legislation, a number of trade union organizations have indicated in their comments that the government does not hold genuine dialogue with the social partners on the subject of minimum wage fixing. In Seychelles, for instance, according to the Seychelles Federation of Workers' Unions, the Government submits a minimum wage rate to the social partners for adoption, which however cannot be discussed or rejected. Moreover, according to this organization, the social partners cannot designate their representatives. The Confederation of Independent Trade Unions of Bulgaria (CITUB) considers that dialogue has been reduced to information meetings, with the trade unions presenting their position, but the Government deciding alone the rate of the minimum wage, generally following the advice of the employers. In Colombia, according to the Single National Union of Workers in the Mining, Energy, Metallurgical, Chemical and Allied Industries (FUNTRAENERGETICA), the tripartite machinery for fixing minimum wages does not function. Both this organization and the National Union of Public Servants of State Social Enterprises (SINALTRAESSES) indicate that decisions are taken by the Government and employers' organizations. The National Association of Civil Servants and Employees in the Judicial Branch (ASONAL-JUDICIAL) and the Colombian Tobacco Company Union (SINTRAITABACO) add that the respective positions of employers' and workers' representatives are so disparate that the Government generally imposes the minimum wage by decree. They indicate that organizations representing workers do not take part in the studies or surveys that are carried out and that their results do not reflect the reality in the country, while consultations or surveys undertaken by workers' organizations are not taken into account by the Government. Finally, Public Services International (PSI) also indicates that, in the majority of cases, the minimum wage is fixed unilaterally by the Government, and that workers' organizations are not consulted, but merely called upon by the Government to comply with the formal requirements of social dialogue.

224. In *Spain*, according to the General Union of Workers (UGT), although the Government consults the most representative employers' and workers' organizations, as required by national legislation, there are no true negotiations in the sense that no proposal put forward by the unions has ever been taken into account. The Trade Union Confederation of Workers' Commissions (CC.OO.) considers that the consultations held

⁷⁵ See *Azerbaijan* – CEACR, Convention No. 131, direct request, 2012.

are often a mere formality, with the views presented by trade union organizations having no real impact on policy decisions, which will already have been taken. According to the CC.OO., consultations are not held to enable the parties to reach agreement. In Peru, according to the Single Confederation of Workers (CUT), the fact that the social partners are unable to reach agreement within the National Tripartite Council for Labour and Employment Promotion (CNTPE) means that the fixing of the minimum wage remains a presidential prerogative. The Autonomous Workers' Confederation of Peru (CATP) considers that, despite the constitutional obligation to consult the social partners, in practice workers' and employers' organizations are not convened, and that the Government takes decisions alone on the issue. This is detrimental to workers, as successive governments have adopted the views of the employers. With regard to the Bolivarian Republic of Venezuela, the Single Union of Public Employees of the Carabobo State Government (SUEPGEC) states that, for the formal sectors of the economy, the Government fixes minimum wages at its own discretion, without consulting the social partners. Moreover, the General Confederation of Labour of Venezuela (CGT) considers that neither the Convention nor the Recommendation are given effect at the national level. According to the CGT, minimum wages are fixed by presidential decree, without prior consultation of the social partners, and there is no social dialogue in the country.⁷⁶ In *Yemen*,⁷⁷ the General Federation of Yemen Workers' Trade Unions indicates that the body responsible for fixing the minimum wage is supposed to work with the Federation but, in reality, does not follow up on the Federation's requests. It adds that employer representatives have not taken part in the work of the Technical Committee on Wages. The General Federation of Bahrain Trade Unions (GFBTU) also complains about the absence of consultation with the social partners. Finally, on a positive note, the Palestine General Federation of Trade Unions (PGFTU)⁷⁸ confirms in its comments that consultations with the social partners on the amount of the minimum wage have taken place within the framework of the wages council and that employers' and workers' organizations have freely designated their own representatives to this body.

225. Several organizations have also highlighted difficulties concerning respect for freedom of association and the right to collective bargaining. The ITUC emphasizes, in this regard, that, in order for decisions on minimum wage fixing to be the subject of meaningful agreement or full consultation with representative organizations of employers and workers, workers must have the right to form independent trade unions that can engage in effective collective bargaining. According to the ITUC, in order to consider that these organizations have been consulted fully, there needs to be genuine deliberation with impact on government decisions. The Jordanian Federation of Independent Trade Unions emphasizes that freedom of association is restricted in the country and that the right to bargain collectively is not recognized. It considers that social dialogue should be reactivated.⁷⁹ In *Uganda*, the National Organisation of Trade Unions (NOTU) indicates in its comments that the right to bargain collectively is not

⁷⁶ See also Bolivarian Republic of Venezuela – CEACR, Convention No. 26, observation, 2013.

⁷⁷ The Committee has observed that there is no institutionalized mechanism for fixing minimum wages through a consultative process sufficiently representative of employers' and workers' interests. See *Yemen* – CEACR, Convention No. 131, direct request, 2013.

⁷⁸ In October 2012, the Palestinian Authority adopted a national minimum wage, which has been in force since 1 January 2013. See ILC: *The situation of workers of the occupied Arab territories*, Report of the Director-General, Appendix, 102nd Session, Geneva, 2013, para. 39.

⁷⁹ The General Federation of Jordanian Trade Unions (GFJTU) considers that employers' and workers' organizations are consulted in fixing the minimum wage.

recognized and that the public authorities are more interested in investors than in the minimum wage. In Switzerland, where minimum wages are almost exclusively fixed through collective bargaining, the Swiss Federation of Trade Unions (USS) claims that, because there is insufficient legal protection for workers' representatives, it is impossible for wage bargaining to take place on a basis of equality.

226. Another question raised by trade union organizations, which is also closely linked to respect for freedom of association, concerns the selection of organizations to be consulted or asked to participate in the operation of minimum wage systems. In Argentina, the Confederation of Workers of Argentina (CTA) reports problems in the composition, structure and functioning of the Council on the Indexed Minimum Living Wage that call into question the legitimacy of its decisions, pointing out that only the two trade union associations that publicly support the Government are represented on the Council. The Municipal Workers Confederation adds that municipal workers are excluded from any consultation on the subject of minimum wage fixing, although they have a very representative union organization.⁸⁰ In *Lebanon*, the National Federation of Trade Unions of Workers and Employees of Lebanon (FENASOL) indicates that the legislation designates the Workers' Federation as the most representative organization, but that it does not represent the public sector and its representativity in the private sector is challenged. FENASOL also claims that the Government imposes numerous restrictions on freedom of association and prevents representative organizations from being established, particularly in the public sector.⁸¹ In New Zealand, the New Zealand Council of Trade Unions (NZCTU) regrets the weakening of the consultation process, which was reformed in 2012 and now provides that only the NZCTU (for workers) and Business New Zealand (for employers) are consulted each year, while the other actors are invited to participate in consultations on a four-year basis. The NZCTU indicates that it was merely informed of the change in the consultation process and regrets that no prior consultation was organized with the interested parties.⁸²

227. A number of employers' organizations have also drawn attention to difficulties in this area. The IOE, in some cases through joint comments made with national employers' organizations, emphasizes that the involvement of the social partners in the fixing, adjustment and application of minimum wages is vital and that, in some countries, employers' organizations are not fully consulted at all stages of the process of fixing minimum wages. Such difficulties exist in *Armenia*, for example, according to the Republican Union of Employers of Armenia (RUEA) and the IOE.⁸³ The IOE refers to the *Plurinational State of Bolivia* as a most serious case, as the minimum wage has been fixed unilaterally by the Government since 2007, despite the existing legal framework and the fact that the country has ratified Convention No. 131. The IOE indicates that in 2012 the Government tried to consult the Confederation of Private Employers of Bolivia

⁸⁰ This organization states, however, that negotiations are under way with a view to creating a National Committee on Decent Municipal Work, which would be responsible for fixing minimum wages for these workers.

⁸¹ See *Lebanon* – CEACR, Convention No. 131, direct request, 2013.

⁸² In its report, the Government of New Zealand regrets the lack of consultation with social partners during the reform and recognizes the importance of full and complete consultation, but it nonetheless considers that the new consultation process will make the annual review more efficient.

⁸³ In its comments on the application of Convention No. 131, the RUEA indicated that the Government simply informed the social partners of the latest decision determining the minimum wage level. See *Armenia* – CEACR, Convention No. 131, direct request, 2012.

(CEPB), which is the most representative employers' organization, but that the workers objected.⁸⁴

228. In *Brazil*, the National Confederation of Industry (CNI) and the IOE consider that there is a lack of participation by employers' organizations in determining the criteria used to increase the minimum wage. According to these organizations, the biggest difficulty stems from indirect interference by the Government in collective bargaining through the creation, in some states of the federation, of regional minimum wage floors fixed by the state governor and approved by the legislative assembly.⁸⁵ With regard to Indonesia, the IOE refers to the tripartite institutional framework, based on wage councils, but reports that the Government often decides minimum wage rates on its own, without taking into account the results of the surveys carried out by the wage councils. In *Kenya*, according to the Federation of Kenya Employers and the IOE, there is a tradition of social dialogue, with minimum wages being fixed within the framework of tripartite cooperation. However, these organizations criticize the fact that the Ministry of Labour can amend the proposals made by the wages councils without consultation. In joint observations on the situation in *Sri Lanka*,⁸⁶ the Employers Federation of Ceylon (EFC) and the IOE report that, when minimum wages are reviewed, and there is a stalemate in discussions, Government representatives very often vote in favour of the workers, thereby supporting minimum wage increases. In *Uruguay*, the Chamber of Industries of Uruguay (CIU), the National Chamber of Commerce and Services of Uruguay (CNCS) and the IOE say that Government representatives generally vote with worker representatives on the Higher Tripartite Council and that, as a result, employer representatives have little influence on minimum wage fixing.

229. With regard to the Bolivarian Republic of Venezuela, the IOE reports that, for over ten years, the Government has been fixing the minimum wage without consulting the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), the country's most representative organization of employers. In joint comments made with FEDECAMARAS, the IOE adds that the Basic Labour Act, adopted in 2012, gives the Government the primary role in fixing minimum wages, to the detriment of the social partners, as the process of consulting the National Tripartite Committee has been abolished. The Government now fixes the minimum wage each year by presidential decree, after consulting various public organizations and socio-economic institutions of its choosing.⁸⁷ The Zambia Federation of Employers (ZFE) and the IOE indicate in their joint comments that the Government of *Zambia* has increased minimum wages for domestic workers and workers in other sectors by 50 per cent without consulting the social partners. In legal proceedings brought by the ZFE, the court ruled that the Government should have consulted the parties concerned, particularly employers, before applying the minimum wage. Finally, with regard to Algeria, the General Confederation of Algerian Enterprises (CGEA) and the IOE report that changes in the national guaranteed minimum wage (SNMG) are among the topics that need to be discussed at tripartite meetings between the Government, workers and employers.⁸⁸

⁸⁴ See *Plurinational State of Bolivia* – CEACR, Convention No. 131, observation, 2013.

⁸⁵ See also *Brazil* – CEACR, Convention No. 131, direct request, 2012.

⁸⁶ In its comments on the application of Convention No. 131, the Lanka Jathika Estate Workers' Union (LJEWU) claims that workers' organizations are not fully consulted on minimum wage coverage for private sector workers. See *Sri Lanka* – CEACR, Convention No. 131, direct request, 2013.

⁸⁷ See also *Bolivarian Republic of Venezuela* – CEACR, Convention No. 26, observation, 2013.

⁸⁸ See *Algeria* – CEACR, Convention No. 99, direct request, 2012.

230. Comments have also been made by a number of other national employers' organizations. With regard to Bulgaria, the Bulgarian Chamber of Commerce and Industry (BCCI) considers that the views of representatives of employers' organizations are not taken into account in fixing the minimum wage. In the Democratic Republic of the Congo, the Federation of Enterprises of the Congo (FEC) reports that employers' and workers' organizations are consulted, but that their views are not always taken into account. It adds that the tripartite commission responsible for proposing the adjustment of the minimum wage at the start of each year, which is chaired by the Ministry of Employment, Labour and Social Welfare, is not meeting. The Jordan Chamber of Commerce indicates that, despite the ratification of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), there is no independent collective bargaining machinery, to the extent that the national legislation gives the Government the right to intervene at any stage of bargaining. Furthermore, collective bargaining is limited to organizations recognized by the Government.

231. In *Serbia*, the Union of Employers of Serbia considers that the time limit of ten days, established by law, for the Economic and Social Council to reach agreement on the amount of the minimum wage is not enough to allow the social partners to negotiate a sound agreement. It points out that, since 2009, it has not proved possible to achieve consensus and the Government has intervened to fix the minimum wage. It also alludes to manoeuvring by Worker representatives to get the Government to fix the minimum wage in the hope that it will be more favourable than if it had been determined through collective bargaining, and adds that the social partners have never been consulted on the issue of which groups of workers should be covered, or on regional or sectoral differences in minimum wages. The Association of Seychelles Employers observes that the National Consultative Committee on Employment (NCCE) has not met for a year because of a ministerial reshuffle and calls for the Committee to meet. It also suggests that the current minimum wage fixing machinery should be reviewed, in consultation with the social partners. Finally, in its comments, the Antigua and Barbuda Employers' Federation expresses disagreement with fixing a single minimum wage, indicating that the country's economy is not ready for a uniform rate.

Section 2. Participation of persons representing the general interests of the country

232. In addition to the important role attributed by Convention No. 131 to the social partners, Article 4(3) of the Convention establishes that provision shall be made, wherever it is appropriate to the nature of the minimum wage fixing machinery, for the direct participation in its operation of persons having recognized competence for representing the general interests of the country and appointed after full consultation with representative organizations of employers and workers concerned, where such organizations exist and such consultation is in accordance with national law or practice.⁸⁹

⁸⁹ Point 23 of the conclusions proposed for a Recommendation for the first Conference discussion expressly provided that "Minimum wage fixing machinery should be so designed that account is taken of the general interests of the country, including the needs of development and the interests of consumers", and went on to provide for the designation of persons to represent these interests. See ILC: Report VII(2), 53rd Session, Geneva, 1969, pp. 121–122.

1. Qualifications of persons representing the general interests of the country

233. In accordance with Paragraph 9 of Recommendation No. 135, the persons representing the general interests of the country should be suitably qualified independent persons who may, where appropriate, be public officials with responsibilities in the areas of industrial relations or economic and social planning or policy-making. Recommendations Nos 30 and 89 also set requirements concerning the qualifications of independent persons and specify that they should be dissociated from any interest in the trade or part of trade concerned which might be calculated to put their impartiality in question.⁹⁰

234. The legislation in several countries makes provision for independent persons or experts to be appointed to the bodies that participate in the process of minimum wage fixing, and some contain provisions on the profile of such individuals and selection criteria. In South Africa,⁹¹ in addition to Worker and Employer representatives, the Employment Conditions Commission includes three persons who are knowledgeable about the labour market and conditions of employment. In *Australia*,⁹² the members of the Experts Panel must have knowledge or experience of one or more of the following fields: workplace relations, economics, social policy and business. In Belgium,⁹³ the Chairperson of the National Labour Council is appointed by the King from among independent persons with particular experience in social and economic matters. Moreover, the positions of chairperson and vice-chairperson on joint commissions are occupied by people who are experienced in social matters and have no personal interest in the matters that may come before the commission. In *Burkina Faso*,⁹⁴ the National Commission on the Guaranteed Interoccupational Minimum Wage includes one representative of the Economic and Social Council, the Director-General of the National Institute for Statistics and Demographics, high-ranking officials from various ministries, two representatives of national women's associations and two representatives of consumers' associations.

235. In the *Republic of Korea*,⁹⁵ the members of the Minimum Wage Council (MWC) representing the public interest must belong to one of the following categories: civil servants above a specific grade with knowledge and experience in labour issues; university professors in labour economics, industrial relations, labour law, sociology, social welfare or related fields; researchers on labour issues at a certified institute; or other persons recognized by the competent minister as having equivalent qualifications. In *France*,⁹⁶ the President of the Social Section of the Council of State is a member of the National Collective Bargaining Commission. The Commission may appoint representatives of relevant ministerial departments to serve in an advisory capacity. In addition, a group of experts issues opinions annually on the evolution of the minimum

⁹⁰ Part II, Paragraph 2(c), of Recommendation No. 30 and Paragraph 6 of Recommendation No. 89.

⁹¹ (1) s. 60(1)–(2).

⁹² (1) s. 627(4).

⁹³ (15) s. 2(6); (2) s. 40.

⁹⁴ (3) s. 3. In *Cameroon* ((1) s. 119), the CNCT includes three members and three substitutes representing the National Assembly, the Economic and Social Council and the Supreme Court, respectively. In addition, experts and technical advisers may serve on the Commission in an advisory capacity.

⁹⁵ (3) s. 14(1); (4) s. 13.

⁹⁶ (1) ss R.2272-1 (4) and R.2272-9; (2) s. 24; (3) ss 1 and 4.

growth wage and reports to the National Collective Bargaining Commission and the Government. It is composed of five persons chosen for their knowledge and experience in economic and social matters, who may neither seek nor receive instructions from any authority.

236. In Hungary,⁹⁷ the National Economic and Social Council (NGTT) is composed, in addition to representatives of workers' organizations and economic bodies (including employers' organizations), of representatives of non-governmental organizations (NGOs) active in national policy, churches and the scientific community. In Indonesia,⁹⁸ representatives of the academic community and experts serve as full members on the National Wage Council, provincial wage councils and district and municipal wage councils. Any candidates must meet certain conditions, particularly with regard to experience. In Kenya,⁹⁹ the legislation specifies that the chairperson and independent members of wage councils must have knowledge and experience in the determination of minimum terms and conditions of employment.

237. In Niger,¹⁰⁰ the Advisory Labour and Employment Commission includes equal numbers of employers and workers. It may appoint qualified civil servants or experts with economic, medical, social or ethnographic experience as advisers. In Peru,¹⁰¹ representatives of public organizations are members of the CNTPE, while in Poland,¹⁰² a representative of the President of the National Bank and a representative of the National Statistics Office take part in meetings of the Tripartite Commission for Socio-economic Affairs. The Government may also invite representatives of central and local government, associations and cooperatives to participate in an advisory capacity to the Commission.

2. Consultation of employers' and workers' organizations on the appointment of persons representing the general interests of the country

238. In accordance with Article 4(3)(b) of Convention No. 131, the appointment of persons having recognized competence for representing the general interests of the country has to take place after full consultation with representative organizations of employers and workers concerned, where such organizations exist and such consultation is in accordance with national law or practice.¹⁰³

⁹⁷ (2) ss 2(2), 4(1) and 5(2). In addition, representatives of the Hungarian Competition Authority and Central Statistics Office may be invited to take part in plenary meetings of the Council in an advisory capacity. In *Iraq* ((1) s. 46(1)), the committee responsible for making proposals on minimum wage rates includes the Director-General of the Workforce Service, who chairs the committee, the Director-General of the Employees' Social Security Administration, a representative of the National Office on Prices and two members chosen by the Minister of Labour and Social Affairs for their experience and knowledge of the various aspects of wage policy.

⁹⁸ (2) s. 98(2)–(3); (4) ss 6(1) and (3), 11, 13(5), 23(1) and (3), 28, 30(5), 40(1) and (3), 45 and 47(5).

⁹⁹ (2) s. 43(5)(a), (d) and (6).

¹⁰⁰ (2) ss 259(3) and 260(4). Similar arrangements apply in the *Central African Republic*: (3) s. 6.

¹⁰¹ (4) s. 4(1)–(2).

¹⁰² (4) ss 4–9. In the United Kingdom, the Low Pay Commission is composed of nine members, three of whom are academics; (1) s. 8(9)–(10) and Schedule 1(1). In Thailand, the Homeworkers Protection Committee includes, in addition to representatives of the Government and the social partners, a maximum of three qualified members, nominated from among experts on matters relating to home work, of whom at least one must represent a non-governmental organization; (4) s. 25.

¹⁰³ During the first Conference discussion, the Committee on Minimum Wage adopted an amendment providing for these persons to be appointed in full consultation with employers' and workers' organizations. Several

239. Few countries have legislation that makes provision for employers' and workers' organizations to be consulted before the appointment of persons representing the general interests of the country to participate in the operation of minimum wage systems. In South Africa,¹⁰⁴ the independent members of the Employment Conditions Commission are appointed by the Minister of Labour after consultation with NEDLAC, which includes representatives of employers' and workers' organizations. In Madagascar,¹⁰⁵ the Wages Commission of the National Labour Council (CNT), a tripartite body, may call on persons qualified in this field. In *Niger*,¹⁰⁶ the decision to bring in experts in an advisory capacity may be taken either by the Chairperson or a majority of the members of the Advisory Committee on Labour and Employment.

240. More often, these independent persons are appointed without prior consultation of the social partners. This is the case in Barbados,¹⁰⁷ *Cameroon*,¹⁰⁸ Canada (Manitoba and New Brunswick)¹⁰⁹ and *France*.¹¹⁰ Furthermore, as the Committee has observed above, in some countries senior civil servants or directors of public bodies participate in the operation of minimum wage systems *ex officio*.

241. In *Japan*,¹¹¹ the members of minimum wages councils, including members representing the public interest, are appointed unilaterally by the Government. In its comments, the Japanese Trade Union Confederation (JTUC-RENGO) criticizes the fact that it was not consulted before the persons representing the public interest on the Central Minimum Wage Council were appointed. The situation is similar in the *Republic of Korea*.¹¹² In their comments on the application of Convention No. 131, the Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU) maintain that the Government's decision to appoint nine members representing the public interest to the ninth MWC unilaterally and without the least consultation of workers' or employers' organizations was a breach of the Convention. For its part, the Government states that such consultations are not provided for in the minimum wage legislation and have never formed part of national practice and that, consequently, the allegations made by the FKTU and the KCTU are based on an incorrect interpretation of the Convention. Moreover, in the Government's view, if workers' and employers'

Government members expressed the view that such consultation was contrary to national practice in many countries. See ILC: *Record of Proceedings*, 53rd Session, Geneva, 1969, pp. 681–682, paras 38–43. Bearing in mind the comments made by various governments, the Office considered that the retention of the subparagraph as worded would substantially reduce the number of countries able to ratify the Convention. Consequently, it was proposed to limit the obligation to consult to those cases in which such consultation was in accordance with national law or practice. See ILC: Report V(2), 54th Session, Geneva, 1970, p. 21. The Office text was adopted by the Committee during its second Conference discussion. See ILO: *Record of Proceedings*, International Labour Conference, 54th Session, Geneva, 1970, p. 381, paras 39–41.

¹⁰⁴ (1) s. 60(1). A similar arrangement applies in Botswana: (1) annex 3, s. 3.

¹⁰⁵ (4) ss 12–13.

¹⁰⁶ (2) ss 259(3) and 260(4).

¹⁰⁷ (2) First Schedule, s. 1(a).

¹⁰⁸ (1) s. 119(1)(e). These persons are appointed by order of the minister responsible for labour, depending on the agenda for each session.

¹⁰⁹ (7) ss 7(1) and (2)(a); (12) ss 46(1) and 47(1).

¹¹⁰ (3) s. 1. This is also the case in Benin: (1) s. 287; Gambia: (1) s. 110(4)(b); India: (1) ss 8(2) and 9; *Kenya*: (2) s. 43(5)(a) and (d); *Malta*: (2) s. 3(2); United Kingdom: (1) s. 8(9)–(10) and Schedule 1, s. 1; and Thailand: (4) s. 25.

¹¹¹ (3) s. 23.

¹¹² (4) s. 12(1).

organizations were entitled to recommend members representing the public interest, the independence and impartiality of those members would be seriously compromised.¹¹³

Conclusion

242. *The close involvement of employers' and workers' organizations at all stages of the process of determining minimum wages is not only a requirement set out in Convention No. 131, but also and above all an essential condition for the proper functioning of the process. Such synergy between governments and social partners allows the concerns and priorities of those most directly affected by the minimum wage policy to be taken into account more effectively.* It thereby facilitates the implementation of those provisions of the Convention relating to economic and social factors which have to be taken into account in fixing minimum wages, which will be examined in the next chapter.

243. By contributing to reconciling interests that are sometimes highly divergent, the full consultation of the social partners and their direct participation in the operation of minimum wage systems also allows for better compliance with the decisions taken on applicable minimum wage rates. *As the Committee has already had cause to emphasize, this fundamental principle "assumes particular importance in periods of economic and social crisis, owing to the considerable repercussions that decisions relating to the fixing and periodic adjustment of minimum wages are likely to have on economic policy, including employment policy, and the purchasing power of workers. Open and constructive social dialogue facilitates the adoption of balanced measures to ensure a fair division of the efforts to be made to overcome the crisis, thereby promoting support for reforms and the maintenance of social cohesion."*¹¹⁴

244. Admittedly, it is rare for national legislation not to give the social partners any role in the operation of the national minimum wage system. However, the existence of legal provisions envisaging the consultation or participation of employers' or workers' organizations is not enough to ensure that effect is given to the requirements of the Convention. *Such consultations have to be effective, or in other words they have to be held before decisions are taken and result in the concerns expressed being genuinely taken into account. Similarly, the participation of employers' and workers' organizations has to be on a basis of equality and involve real collaboration between the tripartite or bipartite partners, depending on the type of minimum wage system in place at the national level.* The Committee is bound to express concern at the fact that many organizations of workers and employers, including the IOE and the ITUC, have sent comments to the Office, with a view to the preparation of this General Survey,

¹¹³ See *Republic of Korea* – CEACR, Convention No. 131, observation, 2013. The KCTU raised the same issue in the comments it submitted for the preparation of this General Survey. In its latest comments addressed to the Government, the Committee confirmed that the Convention requires full consultations with representative employers' and workers' organizations prior to the appointment of independent experts to a minimum wage fixing body only where such consultations were either expressly provided for in national laws or regulations or clearly established in practice. The Committee was therefore of the view that the selection process and working method of the Minimum Wage Council are consistent with the requirements of Article 4(3)(b) of the Convention. The Committee, nevertheless, recalled the fundamental importance of genuine and effective consultations with the social partners for the smooth operation of the minimum wage fixing process, and trusted that, in the interest of promoting constructive social dialogue, the Government and the social partners would engage in open and good faith discussions with a view to examining possible adjustments or improvements to the existing system of minimum wage negotiations in order to enhance efficiency, prevent conflict and build confidence.

¹¹⁴ See *Portugal* – CEACR, Convention No. 131, observation, 2013.

reporting difficulties in this regard. The Committee notes, in this regard, that several organizations have expressed regret at the fact that governments have not taken into account the views expressed during consultations on minimum wage fixing, or that consultations have not led to agreement. ***As the Committee emphasized at the beginning of this chapter, consultation of the social partners should not be confused with the mere provision of information, or with negotiation, nor does the notion of full consultation necessarily imply the conclusion of an agreement between the various partners.*** Nevertheless, it clearly appears that employers' and workers' organizations have high expectations regarding the outcome of consultations held at the national level. In order to secure their support of the decisions taken in this field, it is important for government authorities to demonstrate clearly that the arguments put forward by one side or the other are taken seriously into consideration even if, in systems based on the consultation of the social partners, the final decision rests with the government. ***The Committee emphasizes the great importance for governments to make every effort to establish and maintain the conditions for genuine social dialogue, which guarantees a minimum wage system that responds to the needs of the various parties and contributes to national development.***

245. Finally, the Committee hopes that, in countries where this is not yet the case, governments will consider allowing the participation of independent experts, if possible appointed after consultation of representative organizations of employers and workers, in the operation of minimum wage fixing machinery. Such participation can shed new light on discussions, allow the concerns of other members of society to be taken into account and, in certain cases, make it easier to reconcile differing points of view.

Chapter VI

Criteria for fixing minimum wages and adjustment procedures

246. In accordance with Article 3 of Convention No. 131, the elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include: (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups; (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment. The list of criteria set out in Paragraph 3 of Recommendation No. 135 is worded in almost identical terms.¹ Among the first ILO minimum wage fixing instruments, only Recommendation No. 30 and Recommendation No. 89 make reference to the criteria to be used in this respect, both mentioning “the necessity of enabling the workers concerned to maintain a suitable standard of living”.²

247. In the first Office report during the preparatory work for Convention No. 131 and Recommendation No. 135, it was indicated that “[t]hree such criteria have traditionally been employed: (a) the needs of workers (with or without special mention of the needs of their families); (b) the employers’ capacity to pay; (c) wages paid for comparable work elsewhere in the economy, or, more generally, the relative living standards of wage earners and other social groups. Some other factors sometimes mentioned as criteria, for example the cost of living or the productivity of labour, are related to one or other of these criteria – thus, changes in the cost of living will affect the adequacy of a given wage for meeting the needs of workers, and changes in productivity will affect employers’ capacity to pay.”³ Furthermore, as emphasized in the report of the 1967 Meeting of Experts,⁴ minimum wages will fail to meet the human needs criteria

¹ It should be noted that, with a view to the adjustment of minimum wage rates from time to time, Recommendation No. 135 calls for account to be taken not only of the cost of living, but also of changes therein.

² In accordance with Recommendation No. 30 (Part A, III), regard should primarily be had to the rates of wages being paid for similar work in trades where the workers are adequately organized and have concluded effective collective agreements, or, if no such standard of reference is available in the circumstances, to the general level of wages prevailing in the country or in the particular locality. Recommendation No. 89 (Part I) indicates that, among the factors which should be taken into consideration in the fixing of minimum wage rates are the following: the cost of living, fair and reasonable value of services rendered, wages paid for similar or comparable work under collective bargaining agreements in agriculture, and the general level of wages for work of a comparable skill in other industries in the area where the workers are sufficiently organized.

³ ILC: *Minimum wage fixing machinery and related problems, with special reference to developing countries*, Report VII(1), International Labour Conference, 53rd Session, Geneva, 1969, p. 13. The Report of the 1967 Meeting of Experts also referred to these three criteria (para. 45), while emphasizing that the importance of a fourth criterion on, i.e. the requirements of economic development, had been raised more recently.

⁴ Report of the 1967 Meeting of Experts, para. 82.

indicated above unless they are adjusted from time to time to take account of changes in the cost of living and in economic conditions. For this reason, the present chapter covers, on the one hand, the criteria for fixing and adjusting minimum wages and, on the other, the machinery established for their adjustment. Issues are not re-examined here relating to the decision-making procedure for fixing minimum wages, but rather the frequency of adjustment and the persons and organizations entrusted with taking the initiative in this regard.

Section 1. Criteria for the determination of minimum wage rates

248. The Committee examines successively the criteria related to the needs of workers and their families, and then the criteria of an economic nature taken into account when determining minimum wage levels. However, it needs to be borne in mind that these types of considerations cannot be examined in isolation, as they are very closely interrelated.⁵ Moreover, Convention No. 131 does not make a distinction between the criteria for fixing and adjusting minimum wage rates. As the Office emphasized in one of the reports submitted to the 1967 Meeting of Experts, the two main reasons giving rise to adjustments in minimum wage rates from time to time are increases in the cost of living and economic growth or increases in average incomes per head.⁶ As the Committee indicated in its 1992 General Survey on minimum wages (paragraph 274), it is generally not feasible to take all these criteria into account each time minimum wage rates are adjusted; consequently, simplified criteria are widely used for this purpose.

1. Criteria related to the needs of workers and their families

249. The necessity to take into account the needs of workers and their families flows from one of the key objectives of fixing minimum wages, which is to ensure adequate social protection for employed persons. The Report of the 1967 Meeting of Experts emphasized in this regard that “[w]e must never overlook the fact that when we are dealing with wages we are not dealing with an economic abstraction but with the source of livelihood of millions of people”.⁷ The objective of poverty reduction⁸ assigned to fixing minimum wages is also expressly taken into account in some national legislation, including in *Armenia*,⁹ some provinces of *Canada*,¹⁰ *Croatia*,¹¹ *Czech Republic*,¹² *Kenya*,¹³ *Lithuania*,¹⁴ *South Africa*¹⁵ and *United Republic of Tanzania*.¹⁶

⁵ *General Survey of 1992*, para. 279.

⁶ 1967 Meeting of Experts, Report I, p. 112.

⁷ Report of the 1967 Meeting of Experts, para. 46.

⁸ One benchmark for minimum living standards is provided by poverty thresholds, which are usually based on the “cost of basic needs” for adequate nutrition and other non-food essentials such as clothing, shelter and other items. While international poverty thresholds are used for the purpose of international comparison, national poverty thresholds provide a more useful reference for policy-makers. National poverty thresholds may be determined on the basis of various methods, some examples of which are described in J. Haughton and S.R. Khandker: *Handbook on poverty and inequality*, World Bank, Washington, DC, 2009. Information on poverty thresholds can be used in combination with household size and labour force participation rates to identify “minimum living wages” that are high enough to lift households out of poverty.

⁹ The Sustainable Development Programme 2008–12 envisaged that the minimum wage would be fixed so as to protect workers paid the minimum wage and their families from poverty and thus eliminate the phenomenon of poor workers.

250. Article 3(a) of Convention No. 131 includes among the elements to be taken into consideration the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups, and these elements are also included in Paragraph 3 of Recommendation No. 135.¹⁷ In some countries such as *Albania*,¹⁸ the list of social criteria that have to be taken into account is very close to that in the Convention. In other countries, more specific reference is made to some of these elements.

251. The most frequently used criterion is the **cost of living**, which guarantees workers a certain purchasing power. In some cases, such as *Burkina Faso*,¹⁹ *Republic of Korea*,²⁰ *El Salvador*,²¹ *Japan*,²² *Panama*,²³ *Portugal*,²⁴ *Serbia*²⁵ and *United Republic of Tanzania*,²⁶ as well as the *Central African Republic*, *Gambia* and *Senegal*, according to information provided by these governments reference is made directly to the cost of living, without any indication of how this is measured.

¹⁰ In Quebec, the low income threshold is one of the 13 indicators mentioned in the reference framework for fixing the minimum wage. This factor is also taken into consideration in Saskatchewan.

¹¹ (2) s. 5. The elements taken into account in the last review of the minimum wage in 2013 include the monthly poverty risk threshold for a household.

¹² According to the Government, the evaluation of the minimum subsistence level is taken into account.

¹³ (2) s. 44(5).

¹⁴ According to the Government's report, the criteria taken into account are the minimum living wage and the poverty risk threshold.

¹⁵ (1) s. 54.

¹⁶ (2) s. 37(d).

¹⁷ In the conclusions proposed for the first Conference discussion, the proposed text of a recommendation included a reference to the standard of living that the country is able to provide for the mass of its people. During the first discussion, the working party set up by the Committee on the Minimum Wage deleted that reference and indicated that only the basic needs of workers and their families should be taken into account. This restriction was then removed during the second discussion, when the Employer members proposed an amendment to also delete the reference to the needs of workers' families, pointing out that the notion of family varied considerably. Other arguments were put forward, in particular the risk of violation of the Equal Remuneration Convention, 1951 (No. 100). The proposed amendment was finally rejected. See ILC: Report VII(2), 53rd session, 1969, pp. 119–120, points 6, 15 and 17; ILC: *Record of Proceedings*, 53rd Session, 1969, pp. 682–683, paras 51–63; ILC: *Record of Proceedings*, 54th Session, 1970, pp. 380–382, paras 31–34 and 48–51.

¹⁸ (2) s. 111(2)(b). The needs of workers and their families are taken into account, having regard to the general standard of living of workers in the country, income from social insurance and the living standards of different social groups. This is also the case in Botswana: (1) s. 133(2).

¹⁹ (1) s. 187(1).

²⁰ (3) s. 4(1).

²¹ (1) s. 38(2); (2) ss 144–145.

²² (3) s. 9(2)–(3).

²³ (2) s. 177. In fixing minimum wages, regional variations in the standard of living have to be taken into account.

²⁴ (1) s. 59(2)(a); (2) s. 273(2).

²⁵ (1) s. 112(3).

²⁶ (2) s. 37(d). This is also the case in Jordan: (1) s. 52(B), and in the Lao People's Democratic Republic: (1) s. 46.

252. The legislation in some countries refers more specifically to the **consumer price index** (CPI).²⁷ This is the case in Algeria,²⁸ Belgium,²⁹ *Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina),³⁰ *Brazil*,³¹ Canada (Quebec), Indonesia,³² Luxembourg³³ and *Spain*,³⁴ as well as in *Morocco*,³⁵ New Zealand and the Philippines,³⁶ according to the information provided by these Governments. In *Kenya*³⁷ the legislation lists a number of criteria to be taken into account by wages councils. However, according to the information provided by the Government, the key factor is variations in the cost of living, measured by the CPI. In *France*,³⁸ the SMIC is primarily indexed to variations in the national CPI. In South Africa,³⁹ according to the Government's indications, the CPI for the lowest quintile is taken into account, supplemented by a few index points to ensure that workers do not benefit solely from inflation-linked rises.

²⁷ The CPI measures the price of a theoretical basket of goods and services at regular intervals and records that price as an index number. The change in the CPI over a given period of time, expressed as a percentage, is called the inflation rate. When adjusting minimum wages, it should be borne in mind that the general CPI reflects the prices faced by an average consumer. Because the consumption pattern of poorer households includes a larger share of food than the average, the general CPI tends to underestimate the actual increase in the prices of goods and services consumed by minimum wage earners. This means that, in some circumstances, the rate of inflation experienced by minimum wage earners may be significantly higher than the CPI. In the context of high inflation, it has been pointed out that adjusting minimum wages to price inflation may lead to a so-called "wage price spiral", which has been defined as a situation in which wages and prices chase each other upwards. In times of stable economic growth, adjusting minimum wages only for price inflation will fail to raise the real value of minimum wages in line with productivity growth.

²⁸ (1) s. 87(2).

²⁹ (9) s. 3. Adjustments are made on the basis of the average of the indices for the past four months. In addition, the Government mentions in its report the introduction of a health index, the value of which is obtained by removing certain products from the basket for the CPI (alcoholic drinks, tobacco, fuel).

³⁰ (2) s. 9.

³¹ (5) s. 2(1). The trend in the national CPI over the 12 months preceding the minimum wage adjustment, published by the Brazilian Institute of Geography and Statistics, is taken into account.

³² (3) s. 6.

³³ (1) ss L.222-3 and L.223-1.

³⁴ (2) s. 27(1).

³⁵ Since November 2009, the cost of living index (CLI) has been replaced by the CPI which measures the relative variation in consumer prices of a fixed basket of products consumed by Moroccan households. See *Morocco – CEACR*, Convention No. 26, direct request, 2013.

³⁶ (2) s. 124(b). However, the Trade Union Congress of the Philippines (TUCP) indicated in its comments that the needs of workers and their families are not adequately taken into account.

³⁷ (2) s. 44(5).

³⁸ (1) ss L.3231-4 and R.*3231-2. This index has been measured since 2013 for households in the first quintile of the cost of living distribution (which designates the 20 per cent of the population with the lowest incomes). According to the Government, the new index targets low-income workers more effectively and takes into account better the weight of essential expenditure (rent, energy) borne by these households. The SMIC was previously indexed to the CPI, excluding tobacco, for urban households where the head of household was a salaried employee or wage earner. In 1970, the SMIC replaced the SMIG, introduced in 1950. The SMIG was indexed on prices, which rose less rapidly than wages. As a result, the purchasing power of the SMIG did not rise.

³⁹ The legislation refers to the cost of living: (1) s. 54(3).

253. In other countries, the legislation uses the **inflation rate** as the criterion. This is the case in *Australia*⁴⁰ for the federal minimum wage, *Malta*,⁴¹ *Slovenia*⁴² and Thailand.⁴³ Furthermore, according to the information provided by the governments concerned, the inflation rate is taken into account in fixing minimum wages in *Azerbaijan*, *Canada* (Alberta, Ontario, Saskatchewan and Yukon), *Lebanon* and United Kingdom. In *Uruguay*, according to the Government's report, the forecast inflation rate for the period concerned (six months or one year) is taken into account, with a correction corresponding to the difference between the forecast inflation rate and the actual inflation rate for the immediately preceding period. The Government of Hungary⁴⁴ also indicates that the expected trend in the inflation rate is taken into account.

254. In certain cases, a safeguard clause is introduced to revise the minimum wage in the event of a serious deterioration in the country's economic situation. In *Costa Rica*,⁴⁵ for example, the new method of fixing minimum wages, adopted in 2011, still takes into account the increase in the cost of living, or more specifically the forecast inflation, with a corrective to compensate for the difference between the forecast inflation rate and the CPI for the previous six months. However, the adjustment formula will be revised, particularly if inflation exceeds a certain limit. In Peru, according to the information provided by the Government, the minimum wage is adjusted on the basis of a formula which includes the forecast inflation rate, but the result of the application of the adjustment formula can be revised taking into account factors such as a serious economic recession, a significant increase in the unemployment rate, a significant increase in the proportion of work in the informal economy or an excessive increase in the ratio between the minimum wage and the average wage.⁴⁶

⁴⁰ (1) s. 284(1).

⁴¹ (2) s. 8; (3) s. 3; (4) s. 3 and Schedule A, 1.3 and Schedule B. The minimum wage is adapted to the cost of living by means of a cost of living indemnity calculated on the basis of the inflation rate for the last 12 months, which is measured by the price index.

⁴² (2) ss 3 and 5(1). The annual adjustment of the minimum wage must reflect at least the rise in consumer prices based on official data published by the Statistical Office. Since the adoption of the new Minimum Wage Act in 2010, the adjustment is no longer based on the expected inflation rate because inappropriately low inflation estimates led to minimum wage increases unrelated to the real situation and a loss of purchasing power of the minimum wage which, consequently, no longer fulfilled its primary purpose of the social protection of workers. See *Slovenia* – CEACR, Convention No. 131, direct request, 2013.

⁴³ (1) s. 87. The Act also refers to the cost of living index.

⁴⁴ The Government indicates in its report that, under the agreement signed in the Standing Consultative Forum of the Private Sector and the Government (VKF), the increase in the minimum wage should in future be higher than forecast increases in inflation in order to reverse the decline in the real minimum wage observed since 2007. However, according to the workers' representatives in the National ILO Council, the determination of the minimum wage is only based on economic criteria.

⁴⁵ (5).

⁴⁶ In their comments, the Autonomous Confederation of Workers' Union of Peru (CATP) and the Single Confederation of Workers of Peru (CUT) indicated that the essential needs of workers and their families are not adequately taken into account.

255. In several countries, the types of **workers' needs** which the minimum wage must satisfy are specified. This is the case in *Brazil*,⁴⁷ *Costa Rica*,⁴⁸ *El Salvador*,⁴⁹ *Guatemala*,⁵⁰ *India*,⁵¹ *Mexico*⁵² and *Turkey*.⁵³ In *Benin*,⁵⁴ according to the Government's report, fluctuations in the prices of food staples are taken into account, while in *Canada* (New Brunswick),⁵⁵ the costs of housing, food, clothing, transport, health care and medical supplies are included. In some countries, including *Belarus*,⁵⁶ *Central African Republic*,⁵⁷ *Guatemala*,⁵⁸ *Kyrgyzstan*,⁵⁹ *Latvia*,⁶⁰ *Nicaragua*,⁶¹ *Niger*⁶² and *Bolivarian Republic of Venezuela*,⁶³ a minimum consumer basket serves as a reference point for fixing minimum wages. The same applies in *Armenia*, according to

⁴⁷ (1) s. 7(IV); (2) s. 76; (3) s. 6. The minimum wage must be sufficient to cover basic living needs of workers in terms of housing, food, education, sanitation, leisure, clothing, health, transport and social security.

⁴⁸ (2) s. 177. The minimum wage must cover the normal needs of the worker's household, in material, moral and cultural terms.

⁴⁹ (1) s. 38(2); (2) ss 144–146. The minimum wage has to cover the normal needs of the worker's household in material, moral and cultural terms. The cost of living is assessed taking into account ordinary expenditure on food, housing, health, education and clothing of an average wage-earning family in rural and urban areas.

⁵⁰ (2) s. 103. The minimum wage must cover the normal needs in material, moral and cultural terms, allowing the worker to fulfil his duties as head of the family.

⁵¹ The 15th Session of the Indian Labour Conference in 1957 decided that the following shall be taken into account: minimum nutritional needs, assessed at 2,700 calories per adult; needs related to clothing and housing; expenditure on electricity, fuel etc., representing 20 per cent of the minimum wage. In addition, in 1992, the Supreme Court added to these factors the cost of children's schooling, health care, a minimum of leisure, and saving for old age and marriage, to be considered as 25 per cent of the minimum wage (case of *Workmen v. Reptakos Breet & Co. Ltd.*).

⁵² (2) ss 561–562. Surveys have to be carried out, in particular, on the essential budget to meet each family's needs in material, social and cultural terms and in relation to children's education.

⁵³ The Government's report mentions workers' needs in terms of food, clothing, health and leisure.

⁵⁴ See also *Benin – CEACR*, Convention No. 26, direct request, 2012.

⁵⁵ (12) s. 10(3).

⁵⁶ According to the information provided by the Government, the minimum wage is determined on the basis of a ratio calculated annually between the minimum wage and two social reference indicators: the minimum consumer budget and the minimum subsistence budget. See *Belarus – CEACR*, Convention No. 26, direct request, 2012.

⁵⁷ According to the information provided by the Government, the determination of the SMIG takes into account the cost of living and, in particular, the household basket.

⁵⁸ The Government's report mentions the cost of the basket of essential foodstuffs and the cost of the basket of essential goods among the criteria for fixing the minimum wage. A Bill on indexing of the minimum wage was submitted to the national Parliament in September 2011, under which the minimum wage would be readjusted each year so that it was never less than the cost of the basic family basket as established by the National Statistical Institute. See *Guatemala – CEACR*, Convention No. 131, observation, 2012.

⁵⁹ (1) s. 154(1); (4) s. 3. The minimum wage cannot be less than the minimum subsistence level, defined as the minimum set of goods and services, based on the household basket, necessary to pursue activities and maintain health.

⁶⁰ (5) s. 2. Reference is made to the average annual value of the minimum subsistence basket per inhabitant calculated by the Central Statistical Bureau.

⁶¹ (3) s. 8(a). In fixing the minimum wage, account must be taken of the price of the basic basket of 53 products, taking into account the quantities and nutritional and calorific values for the members of an average family.

⁶² See *Niger – CEACR*, Convention No. 131, direct request, 2013. In the view of the Confederation of Labour of Niger (CNT), however, the basic needs of workers and their families are not sufficiently taken into account when determining the minimum wage.

⁶³ (1) s. 91.

the Government.⁶⁴ In *Ecuador*,⁶⁵ according to the Government, the unified base wage is calculated on the basis of criteria such as inflation, productivity and equity, with a view to progressively narrowing the gap between the level of the minimum wage and the cost of the basic family basket of goods. Finally, in *Ukraine*,⁶⁶ the minimum wage cannot be fixed at a rate below the minimum subsistence level, and a minimum consumption budget is defined.

256. The **general level of wages** in the country is also one of the factors which has to be taken into account under the terms of Convention No. 131. This is the case in *Burkina Faso*,⁶⁷ *Cameroon* and *Gambia*, according to the information provided by their respective governments. In *Barbados*, according to the Government, the wages council for the commercial sector takes into account the comparative wage levels of workers in similar occupations. In *Canada (Manitoba)*, according to the information provided by the Government, account is taken of the objective of maintaining wage competitiveness with neighbouring provinces, where the minimum wage has also been increased, in order to attract and retain workers. In *Japan*,⁶⁸ regional minimum wages have to be fixed taking into account workers' wages in the region.

257. Several member States expressly establish a link between the minimum wage and the **mean wage**.⁶⁹ For example, in *Azerbaijan*,⁷⁰ measures have to be taken to gradually raise the minimum wage to the minimum subsistence level and 60 per cent of the mean wage. The minimum wage cannot be less than one third of the mean wage in *Belarus*,⁷¹ or below 55 per cent of the minimum wage in *Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina).⁷² In *the former Yugoslav Republic of Macedonia*,⁷³ the

⁶⁴ The Confederation of Trade Unions of Armenia indicated, however, that there was no legal text which defined the structure of the minimum consumer basket. According to the Government, a bill had been drafted with a view to defining the structure, composition and method to be used in calculating the basket, but it had finally not been adopted for fear of a negative impact on the country's macroeconomic stability.

⁶⁵ See also *Ecuador* – CEACR, Convention No. 131, direct request, 2013.

⁶⁶ (2) s. 95(3); (3) s. 9(2). According to the Government, the minimum subsistence level corresponds to the monetary value of a range of foodstuffs adequate to provide for the normal functioning of the human body and the maintenance in good health, plus a minimum range of non-food items and services required to meet social and cultural needs. See also *Ukraine* – CEACR, Convention No. 131, direct request, 2013.

⁶⁷ (1) s. 187(1). This is also the situation in *Botswana*: (1) s. 133(2); *Indonesia*: (3) s. 6; *Kenya*: (2) s. 44(5); *Republic of Korea*: (3) s. 4(1); and *Singapore*: (2) para. (5).

⁶⁸ (3) s. 9(2). In addition, wage variations are taken into account in *Bosnia and Herzegovina* (Republika Srpska): (6) s. 29. Similar criteria are applied in the *Czech Republic*: (2) s. 111(2); and in *Slovenia*: (2) s. 3.

⁶⁹ The most widespread reference to evaluate minimum wage levels is probably their proportion of median wages or, as a second best, their proportion of mean wages. In most countries, the median wage (which is the middle observation in the distribution of wages) is lower than the mean wage, which is the sum of all wages divided by the number of wage earners; see D. Neal and S. Rosen: "Theories of the distribution of earnings", in A.B. Atkinson and F. Bourguignon (eds): *Handbook of income distribution* (Elsevier, 2000), Vol. 1, Ch. 7. In developed economies, the ratio of minimum to median wages typically varies between about 35 and 60 per cent, with some clustering around 45–50 per cent; see data from the Low Pay Commission of the United Kingdom, reproduced in ILO: *Global Wage Report 2013* (Geneva, 2013), p. 37. This ratio is often higher in developing countries, where inequality is typically broader and where even median workers earn low wages; see ILO: *World of Work Report 2013* (Geneva, 2013), p. 54–55. While these ratios represent a useful reference point, it is important to disaggregate the analysis and to also consider the distribution of wages separately for women and men, and for different industries, to observe where a minimum wage lies in these respective distributions.

⁷⁰ This requirement was introduced following the approval of the document *Azerbaijan 2020, a vision of the future* by Presidential Decree No. 800 of 29 December 2012.

⁷¹ (5).

⁷² See United Nations Committee on Economic, Social and Cultural Rights: *Initial report submitted by the Government of Bosnia and Herzegovina*, E/1990/5/Add.65, Geneva, 3 Feb. 2005, para. 152.

minimum wage corresponds to 39.6 per cent of the average wage, as established by the State Statistical Office for the preceding year. In *France*,⁷⁴ the annual increase in the purchasing power of the SMIC cannot be less than half the increase in the purchasing power of the average hourly wages recorded by the quarterly survey of the Ministry of Labour. In Israel, according to the Government, the minimum wage is fixed at 47.5 per cent of the mean wage. In *Montenegro*,⁷⁵ the minimum wage cannot be less than 30 per cent of the mean wage for the preceding six months, as established by the Statistical Office. In the *Netherlands*,⁷⁶ the minimum wage is indexed to the average rate of wage increases in the public and private sectors, as calculated by the Netherlands Bureau for Economic Policy Analysis (CPB). In Poland,⁷⁷ according to the Government's report, the increase in the minimum wage, which cannot be less than that of the forecast CPI, is increased by two-thirds of the forecast growth in GDP when the minimum wage is less than half the mean wage. The mean wage is also taken into account in fixing minimum wages in the *Republic of Moldova*,⁷⁸ *Serbia*,⁷⁹ *Slovakia*,⁸⁰ *Ukraine*,⁸¹ and some provinces of Canada,⁸² as well as in Hungary,⁸³ New Zealand and the United Kingdom,⁸⁴ according to their Governments' reports.

258. It should also be borne in mind that Convention No. 131 requires that not only workers' needs, but also those of their families, be taken into account in fixing minimum wages. This is provided for in the *Plurinational State of Bolivia*,⁸⁵ *Bosnia and*

⁷³ (3) s. 4(1). See also *the former Yugoslav Republic of Macedonia* – CEACR, Convention No. 131, direct request, 2013.

⁷⁴ (1) ss L.3231-8, L.3231-9 and R.*3231-2-1. The SMIC is now readjusted on the basis of half the increase in purchasing power of wage earners and salaried employees, and no longer wage earners alone. According to the Government, this development, introduced in 2013, makes it possible to take into account the greater proportion of professional categories of employees among the active population and in the population whose remuneration is very close to the SMIC. The successive annual increments in the minimum growth wage should tend to eliminate any long-term disparity between its increase and general trends in economic conditions and incomes.

⁷⁵ (2) s. 80(2).

⁷⁶ (1) s. 14. However, the amount of the minimum wage can be fixed without applying these criteria where an excessive wage increase could have an adverse impact on employment or lead to a significant increase in social security contributions.

⁷⁷ A civic legislative initiative has been launched seeking to amend the Minimum Wage Act and permanently fix the minimum wage at 50 per cent of the national average wage. See also Poland – CEACR, Convention No. 99, direct request, 2013. However, the Independent Self-Governing Trade Union (Solidarnosc) considers that the needs of the workers and their families are not taken into account adequately when fixing minimum wages.

⁷⁸ (3) s. 3(2) and (4). See also *Republic of Moldova* – CEACR, Convention No. 131, direct request, 2013.

⁷⁹ (1) s. 112(3). According to the Government, in practice, the minimum wage is fixed at around 40 per cent of the average wage.

⁸⁰ (3) s. 6.

⁸¹ (3) s. 9(1). This is also the case in China: (2) s. 6 and Schedule.

⁸² The average wage is taken into account in fixing the minimum wage in Alberta, Ontario and Saskatchewan, and the ratio between the minimum wage and the average industrial hourly wage is the principal criterion used in Quebec, the objective being to maintain this ratio at below 47 per cent.

⁸³ Fluctuations in the ratio between the minimum wage and the national average wage, as well as fluctuations of the same ratio in neighbouring European Union countries are taken into account.

⁸⁴ The Government explains that the objective assigned to the Low Pay Commission, when reviewing the minimum wage, is to maximize the ratio between the minimum wage and the average wage while avoiding adverse effects on employment.

⁸⁵ (1) s. 46(I)(1). According to the Constitution, everyone has the right to a wage which provides them and their family with a decent standard of living. See also *Plurinational State of Bolivia* – CEACR, Convention No. 131, observation, 2013.

Herzegovina (Republika Srpska),⁸⁶ *Ecuador*,⁸⁷ *Guatemala*,⁸⁸ *Iraq*,⁸⁹ *Kenya*,⁹⁰ *Lebanon*,⁹¹ *Mexico*,⁹² *Nicaragua*,⁹³ *Serbia*⁹⁴ and Viet Nam.⁹⁵ This is also the case in Barbados,⁹⁶ Gambia and India,⁹⁷ according to information contained in their Governments' reports. Conversely, the legislation in Argentina⁹⁸ refers explicitly to the needs of a single person. It should, of course, be borne in mind that single-breadwinner households are now no longer in the majority in many countries and that, consequently, the needs of the family can often be covered by the remuneration received by at least two wage earners with gender-related implications. Moreover, the fixing of minimum wages needs to be considered in the wider context of social protection measures, as also suggested under Paragraph 2 of Recommendation No. 135, including family allowances which, in countries where they are provided, can partially provide for the needs of workers' children.

259. Other social considerations may also be taken into account when fixing minimum wages, such as for instance: the promotion of social integration by increased worker participation in *Australia*;⁹⁹ the characteristics of workers paid the minimum wage (age, sex, family status, sector and size of enterprise) in Canada (Ontario); the differences between full-time and other workers, particularly in relation to stability of employment, working conditions and the intensity of work in China;¹⁰⁰ the impact on social security benefits in Hungary; the consistency of regional minimum wages with the social aid programme in *Japan*;¹⁰¹ the nature and risks of work in Panama;¹⁰² conditions of

⁸⁶ (6) s. 31.

⁸⁷ (2) s. 126. Minimum wages must be adequate to cover the worker's normal living needs as a head of household.

⁸⁸ (2) s. 103. The minimum wage must cover the normal needs in material, moral and cultural terms, allowing workers to fulfil their duties as heads of household. See also *Guatemala* – CEACR, Convention No. 131, observation, 2012.

⁸⁹ (1) s. 4.

⁹⁰ (2) s. 44(5).

⁹¹ (1) s. 44. The minimum wage has to be adequate to provide for the essential needs of the worker and his family having regard to the nature of the work.

⁹² (1) s. 123(A)(VI); (2) s. 90. General minimum wages need to be adequate to meet the normal needs of a family breadwinner in material, social and cultural terms, and to provide for the compulsory education of the children.

⁹³ (2) s. 85(1). The minimum wage has to cover the essential and subsistence needs of a family breadwinner.

⁹⁴ (1) s. 112(3).

⁹⁵ (1) s. 91(1), (2).

⁹⁶ The Wages Council for the commercial sector takes into account the means of subsistence required to meet the needs of a family of five.

⁹⁷ According to the Government, three consumption units (two adults and two children) are taken into account per worker.

⁹⁸ (2) s. 116. The minimum subsistence wage is the minimum remuneration that a worker without family responsibilities must receive to provide for food, housing and adequate education and to ensure clothing, health care, transport and leisure.

⁹⁹ (1) s. 284(1)(b).

¹⁰⁰ (2) s. 6 and Schedule.

¹⁰¹ (3) s. 9(2)–(3). The National Confederation of Trade Unions (ZENROREN) considers, however, that minimum pay rates are often below the amount paid under the social aid programme. See *Japan* – CEACR, Convention No. 131, observation, 2013.

¹⁰² (2) s. 177.

employment, wage differentials and inequality in South Africa;¹⁰³ and remuneration and the terms and conditions of employment of workers employed in the sector concerned prevailing in the East African Community in the *United Republic of Tanzania*.¹⁰⁴

2. Criteria related to economic factors

260. Article 3(b) of Convention No. 131, the provisions of which are reproduced in Paragraph 3(f) of Recommendation No. 135, refers to the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment as being among the elements to be taken into consideration in determining the level of minimum wages.¹⁰⁵ Member States give effect to this requirement in different ways. The legislation in a significant number of countries provides for account to be taken in general of the **economic situation** of the country in the determination of minimum wages. This is the case in Algeria,¹⁰⁶ Barbados,¹⁰⁷ *Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina),¹⁰⁸ *Burkina Faso*,¹⁰⁹ Canada (New Brunswick),¹¹⁰ *Latvia*,¹¹¹ *Libya*,¹¹² Madagascar,¹¹³ *Nepal*,¹¹⁴ Slovakia¹¹⁵ and *Uruguay*.¹¹⁶ In Argentina,¹¹⁷ account has to be taken of data on the socio-economic situation and the objectives of the National Council for Employment, Productivity and the Minimum Indexed Living Wage, and a reasonable balance between the two. Moreover, several governments indicated in their reports that the economic situation of the country is also taken into account. This is the case, for example, in

¹⁰³ (1) s. 54. The desirability of eliminating discrimination between men and women in respect of wages for equal work is also taken into account in Botswana: (1) s. 133(2).

¹⁰⁴ (2) s. 37(d).

¹⁰⁵ The conclusions proposed for the first Conference discussion mentioned the requirements of economic growth with reference to such elements as the balance of payments, the level of employment, unemployment and underemployment and the rate of increase of productivity. See ILC: Report VII(2), 53rd Session, 1969, pp. 119–120, paras 6, 16 and 17. See also ILC: *Record of Proceedings*, 54th Session, 1970, pp. 380–382, paras 31–34 and 48–51.

¹⁰⁶ (1) s. 87(2). Reference is made to the general economic situation.

¹⁰⁷ (2) s. 9(2). The conditions prevailing in the sector concerned have to be taken into consideration.

¹⁰⁸ (2) s. 9. Overall economic development is taken into account.

¹⁰⁹ (1) s. 187(1).

¹¹⁰ (12) s. 10(3). Economic conditions in the province and the concept of a reasonable return on private investment are taken into consideration.

¹¹¹ (4) option 1; (5) s. 2. The minimum wage is not linked to a macroeconomic indicator, but variations are assessed on the basis of the country's economic situation and other elements. Macroeconomic forecasts prepared by the Ministry of the Economy, changes in the economic situation which occurred during the preceding year and planned tax reforms have to be taken into account.

¹¹² (1) s. 19. The Wages Council must be guided by the general economic situation and seek to increase production.

¹¹³ (2) s. 55(2). Trends in the national accounts and the economic situation are taken into account.

¹¹⁴ (2) s. 10(b). The Minimum Remuneration Determination Committee has to keep in view the country's economic, monetary and social conditions.

¹¹⁵ (3) s. 6. The country's socio-economic situation over the previous two years is taken into account.

¹¹⁶ (3) s. 17. This is also the case in the *Plurinational State of Bolivia*: (5) Preamble, para. 10; Honduras: (2) s. 382; (3) ss 20–21; *Mexico*: (2) ss 561, 562; (2) s. 90; *Republic of Moldova*: (1) s. 132(2); Singapore: (2); *Slovenia*: (2) s. 3; Turkey: (1) s. 55; and Viet Nam: (1) s. 91(2).

¹¹⁷ (3) s. 139.

Belarus,¹¹⁸ Benin,¹¹⁹ *Central African Republic*, Czech Republic,¹²⁰ *Republic of Korea*,¹²¹ *Romania*,¹²² Russian Federation,¹²³ Bolivarian Republic of Venezuela¹²⁴ and Zimbabwe.¹²⁵ According to information provided by the Government of *France*, growth trends will be taken into account in future adjustments of the SMIC in order to encourage, where appropriate, the redistribution of the benefits of growth.

261. The **requirements of economic development** are taken into account in *Albania*,¹²⁶ *Panama*¹²⁷ and *Portugal*¹²⁸ and, according to the information provided by the Government, in Namibia. In addition, according to the information provided by their respective governments, the following elements are taken into account: income per capita in *Cameroon*, the requirements of economic development in Gambia, economic progress in *Iraq*,¹²⁹ the forecast growth in GDP in Poland, and the state of the national economy, growth prospects and GDP growth in the United Kingdom.

262. **Productivity**¹³⁰ is another important economic criterion for the determination of minimum wages, and is referred to in the legislation of many countries, including Colombia,¹³¹ *Kenya*,¹³² Mauritius,¹³³ *Spain*¹³⁴ and Thailand.¹³⁵ In *Costa Rica*,¹³⁶ since

¹¹⁸ Forecasts of socio-economic development are taken into account.

¹¹⁹ National economic data are taken into account in fixing the SMIG and the categories of minimum wages.

¹²⁰ Economic results, including forecast trends, as well as a comparison of the national and international situation, are taken into account.

¹²¹ The principal economic and social indicators, such as the economic growth rate and employment, are considered when fixing the minimum wage.

¹²² The criteria used are fluctuations in macroeconomic indicators and economic and social development.

¹²³ The fixing of regional minimum wages takes into account the prevalent socio-economic conditions in the region.

¹²⁴ Indicators relating to the country's economic situation, evaluated by studies of the Central Bank of Venezuela, are taken into account.

¹²⁵ The parties to a sectoral collective agreement take the economic performance of the sector into account.

¹²⁶ (2) s. 111(2)(a). The same applies in Botswana: (1) s. 133(2); Indonesia: (3) s. 6; *Kenya*: (2) s. 44(5); Philippines: (2) s. 124; and *Serbia*: (1) s. 112(3).

¹²⁷ (2) s. 177. The country's economic and social policy and the national development objectives have to be taken into account.

¹²⁸ (1) s. 59(2)(a). The level of development of the productive sector, the requirement for economic and financial stability and the accumulation of capital for development are taken into account.

¹²⁹ The draft Labour Code, 2010, envisages that economic factors, including the requirements of economic development, are to be taken into account in fixing the minimum wage.

¹³⁰ Many countries adjust their minimum wages by using productivity indicators to ensure that workers on the minimum wage receive a just share of the fruits of economic growth. In practice, productivity indicators range from "productivity" or "labour productivity" to "GDP per capita" or simply "GDP growth". A review of practices shows that countries where the minimum wage system applies regional or sectoral/occupational rates tend to use productivity indicators slightly more frequently than those countries with simple national minimum wages. A small number of countries use productivity indicators in the context of a mathematical adjustment formula, such as *Brazil* where, since 2007, the annual increase in the minimum wage has been equal to the inflation rate for the previous year, plus the variation in GDP for the year before last. This formula is aimed at preserving the purchasing power of workers while promoting economic growth with social inclusion.

¹³¹ (3) s. 8. Productivity, as established by the Tripartite Committee on Productivity, and the contribution of wages to national economic growth, are taken into account.

¹³² (2) s. 44(5). According to the Government, variations in sectoral productivity levels are an additional criterion, as well as the need to maintain economic conditions conducive to investment and employment growth.

¹³³ (1) s. 97.

the introduction of the new method of fixing minimum wages, account is no longer taken solely of inflation, but also of productivity, in order to establish a link between growth in production and better remuneration for workers. This criterion is also applied in Barbados,¹³⁷ Belgium,¹³⁸ Canada (Ontario and Quebec),¹³⁹ Czech Republic, Gambia, Morocco and Peru,¹⁴⁰ according to the reports provided by their respective governments. In addition, in the Philippines,¹⁴¹ the National Wages and Productivity Commission decided in 2012 to introduce a two-tier wages system. The first tier consists of a compulsory floor wage to protect vulnerable workers, fixed by order at the regional level. The second tier consists of incentives, based on the productivity of workers and the performance of the enterprise and the sector, and is based on agreement between management and workers. A tax incentive has been created to encourage employers to establish productivity committees for this purpose while regional wage and productivity boards make recommendations as guidance for enterprises.

263. Convention No. 131 also refers to the desirability of attaining and maintaining a **high level of employment**. This concern is expressed in various forms in the national legislation in several countries. In South Africa,¹⁴² for example, the Employment Conditions Commission, in formulating recommendations with a view to a sectoral wage determination, has to take into account the likely impact of its proposal on current employment or the creation of employment. In Croatia, for the revision of the minimum wage in 2013, the ratio between the active population and the total population was taken into consideration. In Hungary,¹⁴³ labour market indicators, the national economic situation and the labour requirements of certain sectors or geographical areas are taken into account. In Kenya,¹⁴⁴ wages councils shall take into consideration the desirability of attaining and maintaining a high level of employment, and the likely impact of their proposals on current employment or the creation of employment. The desirability of maintaining a high level of employment is also taken into consideration in Nicaragua.¹⁴⁵ In Mauritius,¹⁴⁶ the need to promote economic growth, protect employment and create employment opportunities is taken into account. The legislation in the Philippines¹⁴⁷

¹³⁴ (2) s. 27(1). Average national productivity and the increase in the share of labour in national income are taken into account.

¹³⁵ (1) s. 87. This is also the case in Algeria: (1) s. 87(2); Ecuador: (2) ss 122(3) and 126; Republic of Korea: (3) s. 4(1); Nicaragua: (3) s. 8(a); Portugal: (2) s. 273(2); and Ukraine: (3) s. 9(1).

¹³⁶ (5).

¹³⁷ The Wages Council for the commercial sector takes labour productivity throughout the economy and in the distribution sector into account.

¹³⁸ The level of sectoral minimum wages depends, inter alia, on the productivity of the sector and its profitability.

¹³⁹ In Ontario, the impact of the most recent increases in the minimum wage on productivity by sector and branch is taken into account. In Quebec, the variation in productivity in Canada is one of the 13 indicators used.

¹⁴⁰ The minimum wage is revised on the basis of a formula which includes, in particular, multifactoral productivity. In Singapore, labour productivity is also taken into account: (2) para. 4.

¹⁴¹ (8). See also DOLE-Arangkada, *Progress report 2012*, pp. 2–6.

¹⁴² (1) s. 54.

¹⁴³ (1) s. 153(3).

¹⁴⁴ (2) s. 44(5).

¹⁴⁵ (3) s. 8(a).

¹⁴⁶ (1) s. 97.

¹⁴⁷ (2) s. 124.

refers to the impact of minimum wage levels on job creation, and that of *Serbia*¹⁴⁸ refers to unemployment rate and employment trends. In the *Netherlands*, adjustments of minimum wage can be made without applying the ordinary criteria set out by law in the event of a threat to employment. In practice, the indexation of the minimum wage is maintained provided that the inactivity rate, expressed as the ratio between the number of persons receiving social benefits and the number of persons in paid employment, is lower than 82.6 per cent.¹⁴⁹ Similar provisions are to be found in the labour legislation in *Albania*,¹⁵⁰ *Indonesia*,¹⁵¹ *Panama*,¹⁵² *Slovenia*,¹⁵³ *United Republic of Tanzania*¹⁵⁴ and *Ukraine*.¹⁵⁵ The Governments of Bulgaria, Canada (Alberta, Ontario and Quebec), Gambia, Hungary, New Zealand, United Kingdom and Viet Nam also indicate in their reports that considerations relating to employment are taken into account in fixing the minimum wage.

264. In some countries, specific reference is made to **economic competitiveness**. In Canada (Quebec), account is taken of the impact of the proposed change in minimum wages on the competitiveness of enterprises. In Mauritius,¹⁵⁶ reference is made to the need to preserve the competitiveness of local products on foreign markets, while enterprise competitiveness is also one of the criteria for fixing minimum wages in Thailand.¹⁵⁷ In *Latvia*,¹⁵⁸ account has to be taken of the evolution of the minimum wage in the other Baltic States. In Belgium,¹⁵⁹ each interoccupational agreement must set a maximum margin for fluctuation in wage costs, taking into account forecast trends in wage costs in three neighbouring reference States during the two years covered by the interoccupational agreement. In the absence of agreement between the social partners, this margin can be set by the Government.

265. The legislation in certain countries makes reference to the **financial capacity of enterprises** as a decisive criterion in fixing minimum wages. In South Africa,¹⁶⁰ *Kenya*,¹⁶¹ *Namibia*¹⁶² and the *United Republic of Tanzania*,¹⁶³ the capacity of employers to carry on their business successfully is taken into account. The financial

¹⁴⁸ (1) s. 112(3).

¹⁴⁹ (1) s. 14. In a judgment issued on 22 June 1995, in an appeal by the Federation of Christian Trade Unions (CNV) concerning the minimum wage freeze, the court found in favour of the Government, confirming that this ratio was effectively the decisive norm in this regard, although it was not laid down in the legislation. See *Netherlands* – CEACR, Convention No. 131, observation, 1998.

¹⁵⁰ (2) s. 111(2)(a). Reference is made to the objective of reducing unemployment.

¹⁵¹ (3) s. 6. The labour market situation is taken into account.

¹⁵² (2) s. 177. Reference is made to employment policy.

¹⁵³ (2) s. 3. Employment trends are taken into account.

¹⁵⁴ (2) s. 37(d). The likely impact on current employment and the creation of employment is taken into account.

¹⁵⁵ (3) s. 9(1). Reference is made to the level of employment.

¹⁵⁶ (1) s. 97.

¹⁵⁷ (1) s. 87.

¹⁵⁸ (5) s. 2.

¹⁵⁹ (4) ss 1–13.

¹⁶⁰ (1) s. 54.

¹⁶¹ (2) s. 44(5).

¹⁶² (1) s. 113(c).

¹⁶³ (2) s. 37(d).

capacity of enterprises is also taken into account in Colombia,¹⁶⁴ Indonesia,¹⁶⁵ *Japan*,¹⁶⁶ *Nepal*¹⁶⁷ and the Philippines.¹⁶⁸ This is also the case in Hungary, Barbados, Mauritius, *Morocco* and Viet Nam, according to the information contained in the reports of the governments concerned. In some countries, due to the link between the minimum wage and public sector wages, the budgetary capacity of the State, which is also an employer, is also taken into consideration, according to the information provided by the Governments of *Albania*, *Azerbaijan*, Bulgaria,¹⁶⁹ and *Republic of Moldova*.

266. A number of other factors of an economic nature are sometimes taken into consideration in fixing minimum wages, including: non-wage labour costs and tax credits for workers whose annual remuneration is below a certain threshold in Barbados; the system of remuneration in enterprises in Honduras;¹⁷⁰ the functioning of medium-sized, small and micro-enterprises in *Kenya*¹⁷¹ and the *United Republic of Tanzania*;¹⁷² the need to maintain a fair balance between the prescribed rates in different sectors in Mauritius; and a reasonable return on investment in the Philippines.¹⁷³

267. Finally, it should be noted that, in its comments for the present survey, the IOE expressed concern that economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment, are not taken into account by a considerable number of governments when setting the minimum wage. The IOE indicated that in the *Plurinational State of Bolivia*, Cambodia, *Sri Lanka*, *Uruguay* and Bolivarian Republic of Venezuela, for example, the productivity rate is not taken into consideration when minimum wages are set. It added that, in *Kenya*, over the past five years (2009–13), minimum wage increments have been determined annually on the sole basis of the inflation rate, despite the sluggish performance of the economy, while in *Brazil* Act No. 12.382 of 2011 removed the issue of productivity from national discussions on minimum wage setting.

Section 2. Adjustment of minimum wages

268. Under the terms of Article 4(1) of Convention No. 131, States which ratify the Convention shall create and/or maintain machinery whereby minimum wages can be fixed and adjusted from time to time. Paragraphs 11 to 13 of Recommendation No. 135 specify that minimum wage rates should be adjusted from time to time to take account of changes in the cost of living and other economic conditions and, to this end, a review might be carried out of minimum wage rates in relation to the cost of living and other

¹⁶⁴ (2) s. 146(1).

¹⁶⁵ (3) s. 6.

¹⁶⁶ (3) s. 9(2).

¹⁶⁷ (2) s. 10(b).

¹⁶⁸ (2) s. 124.

¹⁶⁹ In its comments, the Bulgarian Chamber of Commerce and Industry observes that the current method of determining the minimum wage does not adequately reflect productivity, business finances and the need to maintain employment levels.

¹⁷⁰ (2) s. 382; (3) s. 21.

¹⁷¹ (2) s. 44(5).

¹⁷² (2) s. 37(d).

¹⁷³ (2) s. 124.

economic conditions either at regular intervals or whenever such a review is considered appropriate in the light of variations in a cost-of-living index.¹⁷⁴ As indicated below, periodical surveys of national economic conditions should be carried out for this purpose, to the extent that national resources permit, and the frequency of such surveys should be determined in the light of national conditions. Convention No. 131 and Recommendation No. 135 do not therefore impose a specific periodicity for the adjustment of minimum wages. However, this adjustment has to be sufficiently regular to ensure that minimum wage levels remain in line with the socio-economic realities of a given country. The Committee further recalls that the provisions of Convention No. 131 relating to the full consultation and participation of the social partners on a basis of equality and, where appropriate, the participation of persons representing the general interests of the country, considered in Chapter V, also apply to the procedure for adjusting minimum wages.

269. In the great majority of countries, the legislation provides that minimum wages have to be revised periodically. In *Montenegro*,¹⁷⁵ *Nicaragua*¹⁷⁶ and the *Netherlands*,¹⁷⁷ the adjustment is half-yearly. In *Serbia*,¹⁷⁸ the legislation provides that the minimum wage shall be fixed and adjusted by the Social and Economic Council for a period of not less than six months and, according to the Government's report, the frequency of revision is in practice every six months. In *Costa Rica*,¹⁷⁹ according to the Government, minimum wages are in practice adjusted every six months by the National Wages Council, although the legislation provides for annual adjustment. In Poland, according to the Government, the minimum wage is adjusted annually if the forecast CPI is less than 105 per cent, and twice a year if it is equal to or greater than 105 per cent. The revision is also half-yearly or annual in *Romania* and *Tunisia*, according to their respective governments. Finally, in *Uruguay*, the national minimum wage is in practice revised once or twice a year, although the frequency is not clearly established.

270. More often, minimum wages are adjusted annually. In *Australia*,¹⁸⁰ the national minimum wage order and minimum wages fixed in modern awards are reviewed in the course of each financial year. In the *Plurinational State of Bolivia*,¹⁸¹ the legislation provides for the periodic adjustment of the minimum wage and, according to the information provided by the Government, this adjustment takes place in the first half of each year, with retroactive effect from 1 January. In *Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina),¹⁸² minimum wages have to be adjusted annually. However, if the cost-of-living index increases by more than 5 per cent for three

¹⁷⁴ The conclusions proposed for the first Conference discussion envisaged that a close link should be established between an appropriate cost-of-living index and the rate or rates of minimum wages. A provision almost identical to that of the final text of the Recommendation was approved during the first Conference discussion. See ILC: *Record of Proceedings*, Report VII(2), 53rd Session, 1969, p. 122, para. 26. See also ILC, 53rd Session, 1969, p. 687, paras 23–24.

¹⁷⁵ (2) s. 80(3). See also *Montenegro* – CEACR, Convention No. 131, direct request, 2013.

¹⁷⁶ (3) ss 4, 8 and 11. It is also provided that when the minimum wage in each sector reaches 100 per cent of the basic consumer basket, subsequent adjustments will be limited to the indexation of the half-yearly change in the CPI.

¹⁷⁷ (1) s. 14. In addition, the responsible minister has to consider, at least every four years, whether circumstances exist which justify a special adjustment of minimum wages.

¹⁷⁸ (1) s. 112(1), (2) and (4).

¹⁷⁹ (3) s. 16; (4) s. 47.

¹⁸⁰ (1) s. 285.

¹⁸¹ (3) s. 46.

¹⁸² (2) s. 9.

consecutive months, minimum wages have to be automatically adjusted by the Government. Minimum wages are also adjusted on an annual basis in *Brazil*,¹⁸³ *Colombia*,¹⁸⁴ *Croatia*,¹⁸⁵ *Ecuador*,¹⁸⁶ *the former Yugoslav Republic of Macedonia*,¹⁸⁷ *France*,¹⁸⁸ *Guatemala*,¹⁸⁹ *Hungary*,¹⁹⁰ *Republic of Korea*,¹⁹¹ *Latvia*,¹⁹² *Malta*,¹⁹³ *Mexico*,¹⁹⁴ *Portugal*,¹⁹⁵ *Slovakia*,¹⁹⁶ *Slovenia*,¹⁹⁷ *Spain*¹⁹⁸ and the Bolivarian Republic of Venezuela.¹⁹⁹

271. In *Ukraine*,²⁰⁰ the minimum wage is adjusted at least once a year in the framework of the adoption of the State Budget Act. In *Burundi*,²⁰¹ the Labour Code provides for the annual review of minimum wages. In addition, according to information provided by the Governments of *Albania*, *Belarus*, *Botswana*, *Chile*, *Indonesia*, *Mauritius* and *Viet Nam*, minimum wages are also adjusted annually. That is also the case in *Turkey*, according to

¹⁸³ (5) s. 2(1) and (4).

¹⁸⁴ (3) s. 8.

¹⁸⁵ (2) s. 4.

¹⁸⁶ (1) s. 328(2) and transitional provision No. 25; (2) s. 117(2).

¹⁸⁷ (3) s. 4. The minimum wage is revised each year to correspond to 39.6 per cent of the average gross wage.

¹⁸⁸ (1) ss L.3231-4 to L.3231-11. In addition, in the event of a rise of at least 2 per cent in the national CPI during the year in relation to the index at the time the SMIC was determined for the immediately preceding period, it is automatically increased by the same proportion, with effect from the first day of the following month. Finally, the Government may decide during the year on a supplementary increase in the SMIC (the so-called “coup de pouce”).

¹⁸⁹ (2) s. 113.

¹⁹⁰ (1) s. 153(4).

¹⁹¹ (3) s. 8; (4) s. 7.

¹⁹² (5) ss 2–5. The Government indicated that, due to the economic instability, the risk of structural unemployment and the need for fiscal consolidation, it was decided, in consultation with the National Tripartite Cooperation Council, not to readjust the level of the minimum wage in 2012. See *Latvia* – CEACR, Convention No. 131, direct request, 2013. In 2013, the Government decided to increase the minimum wage as from 1 January 2014.

¹⁹³ (2) s. 8; (4) Schedule A, ss 1.2–1.3.

¹⁹⁴ (2) s. 570.

¹⁹⁵ (2) s. 273(1). A tripartite agreement was concluded in December 2006 on the medium-term trend for the minimum wage. However, the amount of the minimum wage was frozen in 2012 in the framework of a financial assistance programme which was the subject of an agreement between the Government, the European Commission, the European Central Bank and the International Monetary Fund. The General Confederation of Portuguese Workers (CGTP) and the General Workers’ Union (UGT) made observations criticizing this decision. See *Portugal* – CEACR, Convention No. 131, observation, 2013.

¹⁹⁶ (3) ss 7–9.

¹⁹⁷ (2) s. 5(1).

¹⁹⁸ (2) s. 27(1). The minimum interoccupational wage (SMI) is also subject to a half-yearly adjustment if forecasts for the CPI do not materialize. In 2012, the amount of the SMI maintained unchanged due to the country’s economic situation, which gave rise to observations by the Trade Union Confederation of Workers’ Commissions (CC.OO.) and General Union of Workers (UGT). See *Spain* – CEACR, Convention No. 131, observation, 2013. The minimum wage was increased slightly in 2013.

¹⁹⁹ (1) s. 91.

²⁰⁰ (3) s. 10.

²⁰¹ (1) s. 249. The Trade Union Confederation of Burundi (COSYBU) considered that the Convention was a dead letter as the interoccupational guaranteed minimum wage (SMIG) had not been revised since the 1980s and asked the Government to readjust the SMIG level as a matter of urgency. See also *Burundi* – CEACR, Convention No. 26, observation, 2013.

the Government's report, although the legislation provides for adjustment at least once every two years.²⁰² It should be noted that in the Philippines²⁰³ minimum wage orders cannot be revised for a period of 12 months following their entry into force and no claim for an increase in minimum wages can be admitted during that period. An exception is envisaged, however, in special circumstances, such as an exceptional increase in the prices of oil and basic goods and services.

272. The legislation in other countries provides for a different frequency in the adjustment of minimum wages. In Luxembourg,²⁰⁴ the Government submits a report on changes in general economic conditions and incomes every two years to the Chamber of Deputies accompanied, as appropriate, by a bill increasing the level of the minimum social wage. In addition, the minimum social wage is adjusted in line with the weighted CPI. However, the Government indicates in its report that, due to the difficult economic situation, increases in the minimum wage through indexation are currently limited to once a year. In Panama,²⁰⁵ the minimum wage must be adjusted at least every two years, and the same occurs in practice in *Antigua and Barbuda*,²⁰⁶ although the legislation does not fix any specific frequency. In Benin,²⁰⁷ the SMIG may be adjusted every three years or when required, while in *El Salvador*,²⁰⁸ sectoral minimum wages have to be adjusted at least every three years. In *Egypt*,²⁰⁹ a tripartite National Wages Council, created in 2003, was mandated to establish a minimum wage and review it every three years. However, it was only in 2010 that the minimum wage, which had been fixed in 1984, was finally readjusted. Finally, in India,²¹⁰ the legislation provides that minimum wages shall be adjusted at least every five years.

273. In some countries, the social partners may request the adjustment of minimum wages. In Argentina,²¹¹ the minimum wage may be adjusted at any time, at the request of one of the parties represented on the National Council on Employment, Productivity and the Minimum Adjustable Wage. In *Guatemala*,²¹² minimum wages may also be adjusted at the request of the social partners. In *Costa Rica*,²¹³ the adjustment of minimum wages may be requested by five employers or 15 workers in the same sector. In Honduras,²¹⁴ in addition to the annual adjustment of minimum wages, the social partners may request their adjustment in mid-year when inflation in the first half of the year exceeds 12 per cent. In *Mexico*, minimum wages, which are fixed annually, may be adjusted at any time if the economic situation so warrants, at the Government's initiative or, under certain conditions, at the request of trade unions, federations and

²⁰² (2) s. 39(1).

²⁰³ (9) Reg. IV s. 3.

²⁰⁴ (1) ss L.222-2(2) and L.222-3.

²⁰⁵ (2) s. 174. In China, minimum wage rates have to be adjusted at least every two years, and whenever appropriate when the indicators related to the criteria used to determine the minimum wage change; (2) s. 10.

²⁰⁶ See *Antigua and Barbuda* – CEACR, Convention No. 131, direct request, 2013.

²⁰⁷ (1) s. 210(2).

²⁰⁸ (2) ss 152 and 159.

²⁰⁹ See *Egypt* – CEACR, Convention No. 131, direct request, 2012.

²¹⁰ (1) s. 3(1)(b).

²¹¹ (3) s. 138.

²¹² (2) ss 110c and 114.

²¹³ (3) s. 19; (4) ss 53–57.

²¹⁴ (3) s. 35.

confederations of workers or employers.²¹⁵ In *Uruguay*,²¹⁶ sectoral minimum wages are adjusted by wages councils convened by the Government, on its own initiative or at the request of representative organizations in the sector concerned.

274. Finally, in a number of countries, the adjustment of minimum wages occurs from time to time, without a fixed frequency. According to information provided by the Government of *Cameroon*, the SMIG is revised from time to time by order of the Minister of Labour issued in consultation with the National Labour Advisory Board (CNCT).²¹⁷ In the United States, the amount of the federal minimum wage is adjusted by law at irregular intervals. The Fair Minimum Wage Act, 2007, introduced a progressive increase in three stages which brought the federal minimum wage to its current level in 2009. In *Japan*,²¹⁸ regional minimum wages are adjusted when the Minister of Health, Labour and Welfare or the responsible prefectural authorities consider it necessary. In *Lebanon*,²¹⁹ minimum wages are adjusted whenever economic circumstances make it necessary to do so. In *Madagascar*,²²⁰ the legislation provides that the minimum starting wage by occupational category shall be adjusted periodically. In *Peru*, the minimum wage is adjusted regularly by the CNTPE. According to the Government's indications, since 2007 the CNTPE has included a technical commission on productivity and minimum wages mandated with developing a machinery for the periodic adjustment of minimum remuneration. In *Zambia*,²²¹ the legislation does not specify the periodicity for the revision of minimum wages, which are fixed by orders. However, any person affected by such an order may request its revision. Similarly, no particular frequency has been fixed for the adjustment of minimum wages in *Barbados*,²²² *Burkina Faso*, *Central African Republic*, *Cuba*, *Gambia*, *Republic of Moldova*,²²³ *Niger*, *Russian Federation* and *United Republic of Tanzania*.

Section 3. Surveys of the economic and social situation of the country and the collection of statistical or other data

275. Recommendation No. 135 provides that, to the extent possible in national circumstances, sufficient resources should be devoted to the collection of statistics and other data needed for analytical studies of the relevant economic factors and their

²¹⁵ (2) s. 570. Such a request may be submitted by workers' organizations representing at least 51 per cent of unionized workers, or by employers having at least the same percentage of workers in their employment.

²¹⁶ (3) s. 5(2).

²¹⁷ In addition, in each branch of activity, the adjustment of minimum wages is carried out by joint committees. However, according to the Confederation of United Workers of Cameroon (CTUC), pay scales fixed in agreements are neither applied nor reviewed by the prescribed dates. See *Cameroon* – CEACR, Convention No. 131, direct request, 2012.

²¹⁸ (3) s. 12.

²¹⁹ (1) s. 46.

²²⁰ (2) s. 55(2).

²²¹ (2) s. 3.

²²² The Committee recalled that the minimum wage for domestic workers had not been revised for over 20 years. See *Barbados* – CEACR, Convention No. 26, direct request, 2012.

²²³ The Government referred, however, to a new procedure for the annual adjustment of the guaranteed minimum wage. See *Republic of Moldova* – CEACR, Convention No. 131, direct request, 2013.

probable evolution. The Committee recalls that the Labour Statistics Convention, 1985 (No. 160), and the Labour Statistics Recommendation, 1985 (No. 170), provide guidance on this subject. In addition, as has been seen, for the adjustment of minimum wages, periodic surveys of the economic situation of the country, including changes in per capita income, productivity, employment, unemployment and underemployment should be carried out, to the extent that national resources allow.

276. Accurate and recent data with comprehensive coverage are required for evidence-based policy-making and evaluation. Such data usually come from either labour force surveys (LFS) or establishment surveys. Analyses using both types of sources tend to be more accurate, as they produce different estimates due to the difference in coverage and accuracy between the two sources. Establishment surveys are generally acknowledged to have smaller errors in the measurement of earnings because the data are obtained directly from establishments. In contrast, while the earnings variable in an LFS has more measurement error (people do not like to report their earnings, or tend to report them inaccurately), the employee coverage is generally acknowledged to be larger. This is particularly the case for countries which have a large informal sector not captured in establishment surveys, or which carry out establishment surveys that are limited to companies of a certain size (for example, only firms with ten or more employees).

277. Wage data are collected in most countries. In the context of the 19th International Conference of Labour Statisticians (ICLS), held in October 2013, the ILO carried out a review of household-based survey questions on income from employment covering household surveys from 113 countries in all regions of the world.²²⁴ The review revealed that only 21 surveys did not contain any question on income from employment. Employee-income information was collected in 92 household-based surveys, covering all or some components. The highest coverage of employee-income data by region was found in Latin America, where all 22 surveys included in the sample intended to collect information on income from paid employment. Among the surveys in the sample that do not collect any separate data on employee income, most are found in advanced countries and Eastern Europe and the Commonwealth of Independent States (CIS), where specialised surveys may exist.

278. In the reports submitted for the General Survey, a fairly large number of governments have provided information on the available statistical data and the surveys carried out to inform decision-making relating to the fixing of minimum wages. For example, in South Africa, the Ministry of Labour carried out a study in 2010 of all the sectors covered by sectoral wage fixing to establish the extent to which the minimum wage can improve the situation of vulnerable workers. In Algeria,²²⁵ surveys carried out periodically by the National Institute of Labour and the National Statistical Office seek to ascertain wage levels, in particular, by socio-occupational category, gender and branch of activity. In *Australia*,²²⁶ the Expert Panel of the Fair Work Commission carries out an annual review of minimum wages. Its deliberations are based on research and the collection of statistical data by the Commission's Minimum Wage Research Group. The Government of Belgium indicates that it has a well-developed statistical system, accessible to the social partners, and it refers to the survey of the structure and distribution of wages carried out every four years in the framework of Eurostat's

²²⁴ See *Report I, General report*, 19th International Conference of Labour Statisticians, Geneva, 2–11 October 2013.

²²⁵ See also Algeria – CEACR, Convention No. 99, direct request, 2012.

²²⁶ More information can be found at the website of the Fair Work Commission: <http://www.fwa.gov.au>.

harmonized data collection. In Belize,²²⁷ the Committee noted the adoption of orders fixing the minimum wage for adult workers and students, following the recommendations of a tripartite Minimum Wage Task Force, which carried out surveys and gathered data before submitting its final report in January 2010.

279. According to the Government of *Burkina Faso*, the National Institute of Statistics and Demography carries out periodic surveys and studies of the economic situation of the country, which allow the Joint Commission for Private Sector Wage Bargaining to fix or adjust minimum wage rates, with its conclusions being forwarded to the social partners. The Government of Colombia²²⁸ indicates that several surveys are carried out to determine trends in the principal labour market variables. It refers, in particular, to the Major Integrated Household Survey (GEIH), which provides information on the socio-demographic variables of the population and allows measurement of the characteristics of employment and unemployment. This survey also provides information on the quality of employment, with a view to measuring the living standards index and the index of unsatisfied basic needs.

280. With respect to India, the Committee noted in its comments the measures taken by the Government to enhance the transparency and reliability of the data used for the periodic readjustment of minimum wage levels and, in particular, the establishment of a new Index Review Committee (IRC) with tripartite membership and the adoption of the IRC's final report in 2009 which recommended, inter alia, the setting up of a standing tripartite committee of all stakeholders to review issues related to the conduct of the New Working Class Family Income and Expenditure Survey, as well as the strengthening of the audit mechanism of the prices which go into the compilation of the CPI.²²⁹ The Government of Indonesia indicates in its report that surveys are carried out on needs for decent living. Similarly, according to the Government of *Japan*,²³⁰ data on the national and regional economic situation are collected for the purpose of determining minimum wages. The Government of *Lebanon*²³¹ indicates that the tripartite Cost of Living Index Commission gathers statistics on fluctuations in the cost of living and in prices, which serve as a basis for its recommendations. According to information provided by the Government of Malawi,²³² the Employment Act of 2000 is currently under review and a proposal has been made for a tripartite labour advisory council to undertake investigations and recommend appropriate minimum wages to the Minister whenever the need arises to review wages. In *Mexico*,²³³ the legislation provides that surveys shall be carried out on the general economic situation of the country, major changes in the various economic activities and labour market conditions.

281. In *Nicaragua*, the Ministry of Labour carries out a monthly survey of establishments in the formal economy, in particular to analyse employment and wage trends by sector and measure the average wage. The Government of *Niger* indicated in its report that studies have been carried out to obtain a better understanding of the

²²⁷ See Belize – CEACR, Convention No. 26, direct request, 2012.

²²⁸ See: <https://www.dnp.gov.co/Portals/0/archivos/documentos/DDS/SISD/boletin37.pdf>.

²²⁹ See India – CEACR, Convention No. 26, direct request, 2012.

²³⁰ The Japanese Trade Union Confederation (JTUC-RENGO) considers, however, that the data collected are not reliable as the surveys only cover enterprises with fewer than 30 regular employees, where the unionization rates are around 1 per cent.

²³¹ See also *Lebanon* – CEACR, Convention No. 111, direct request, 2009.

²³² See Malawi – CEACR, Convention No. 26, direct request, 2013.

²³³ (2) ss 561–562.

interaction between the fixing of minimum wages and employment promotion and poverty reduction policies. According to the Government of the United Kingdom, the Low Pay Commission has launched over 100 research projects into different aspects of the minimum wage. Up to ten studies are carried out each year. The results are summarized in the annual report of the Commission and all the research carried out is published on its website.²³⁴ In New Zealand, the New Zealand Income Survey, carried out annually by Statistics New Zealand, complements the Household Labour Force Survey. Their results are used for the annual review of the minimum wage.²³⁵

282. In Panama, a technical study of the minimum wage was carried out on the basis of an analysis of the labour market and poverty. A survey also covered the development in certain areas of the interior of the country, which facilitated the restructuring of regional minimum wages, with the elimination of one region in 2010. In the *United Republic of Tanzania*, the Committee noted the Government's indications that some wage boards were not able to conduct any investigation on minimum wage and working conditions in 2011 and that steps were taken to commission a study on the minimum wage in order to assist the members of the wage boards in their deliberations.²³⁶ The Government of Turkey,²³⁷ indicates that, although no regular studies are carried out of national economic conditions, the National Statistical Institute provides statistics each year on the nutritional needs of workers. In Viet Nam, a living standards survey is published annually by the General Statistics Office. The Government prepares a report on the country's socio-economic development while a survey on production, wages and incomes of workers is carried out annually by the Ministry of Labour, Invalids and Social Affairs in some 1,500 enterprises.

Conclusion

283. *Convention No. 131 leaves member States with considerable leeway in determining the precise criteria to be applied in the fixing or periodic adjustment of minimum wages and their respective weighting.* The elements that it lists have to be taken into consideration "so far as possible and appropriate" and "in relation to national practice and conditions". However, certain basic rules are established. In order to meet their objective of social protection, minimum wages have to meet the needs of workers and their families. *Although the Convention does not specify the types of needs that have to be met, it should be borne in mind that the Preamble to the ILO Constitution proclaims that an improvement of conditions of labour is urgently required, in particular the provision of an adequate living wage.*²³⁸ *The Committee emphasized in*

²³⁴ See www.lowpay.gov.uk.

²³⁵ According to the New Zealand Council of Trade Unions (NZCTU), however the Ministry of Business, Innovation and Employment does not publish the methodology used to analyse the data and to extract employment predictions from it. For its part, the Government indicates that the effects on employment are evaluated on the basis of econometric analyses focused on the groups most sensitive to variations in the minimum wage (young people, women and Pacific people) and the employment impacts mentioned in the annual minimum wage review report correspond to the sum of the impacts on these groups.

²³⁶ See *United Republic of Tanzania* – CEACR, Convention No. 131, direct request, 2013.

²³⁷ In its comments, the Confederation of Turkish Trade Unions (TÜRK-İS) observed that it has been conducting a monthly survey for 26 years on the living standards of workers and their families, which has never been taken into account by the Government when fixing the minimum wage.

²³⁸ The same idea is reflected in Article III(d) of the 1944 Philadelphia Declaration and the 2008 Declaration on Social Justice for a Fair Globalization.

*Chapter I that the concept of “living wage” takes into account more than the satisfaction of food, housing and clothing needs, and includes the possibility of participating in the country’s social and cultural life.*²³⁹

284. *However, this consideration does not of itself suffice to ensure full conformity with the provisions of the Convention. The minimum wage also has to be fixed taking into account economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment. The desired balance is not always easy to achieve. Indeed, if the minimum wage is too low, it will not achieve its objective of social protection. If it is too high, it runs the risk of not being widely respected or giving rise to the expansion of the informal economy. However, social and economic considerations are not necessarily conflicting. Fixing an adequate minimum wage can contribute to a lower turnover of workers in enterprises and encourage the latter to increase their productivity by improving work organization and through capacity development of employees. At a broader level, it can contribute to an increase of consumer spending and therefore to economic growth.*

285. Convention No. 131 does not impose a minimum wage level which would be appropriate in light of the situation prevailing in each State, but rather provides tools which the tripartite constituents have to adapt for themselves. The active participation of employers’ and workers’ organizations, which represent the parties most directly concerned by these issues, is essential to allow optimal consideration of all the relevant factors in the national context. Finally, if social dialogue is really to bear fruit and give rise to solutions that benefit everyone in terms of both the specific criteria for fixing minimum wages and the procedure and frequency of their adjustment, it is important – to the extent that national resources allow – to collect disaggregated statistical data and carry out periodic surveys of the country’s economic and social situation, as provided in the instruments under examination and in other relevant instruments.

²³⁹ In addition, the Committee mentioned in the introduction to this General Survey the conclusions of the United Nations Committee on Economic, Social and Cultural Rights with regard to States in which the applicable minimum wage does not allow workers and their families to live decently. It also referred to other international organizations, including the European Committee of Social Rights, which considers that the concept of a “decent standard of living” that must be provided by the minimum wage goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities. See, in particular, the conclusions of 2010 regarding Greece and the *Netherlands* on the application of Article 4.1 of the European Social Charter.

Chapter VII

Minimum wage enforcement measures

286. Any system of minimum wages would be ineffective if not accompanied by measures to ensure its implementation in practice. For that reason, Convention No. 131 and Recommendation No. 135 contain provisions covering various aspects of this issue and, in particular: the binding nature of minimum wages and the prohibition on reducing them; the need to ensure that information is made available to employers and workers on current minimum wage rates; enforcement of the relevant provisions by the labour inspection services; imposition of adequate sanctions in the event of violations of these provisions; the means for workers to assert their rights and to recover amounts due to them and be protected against any victimization; and the participation of employers' and workers' organizations in procedures to enforce provisions on minimum wages.

Section 1. Binding nature of minimum wages

287. Convention No. 131 provides in Article 2(1) that minimum wages shall have the force of law and shall not be subject to abatement, thereby going beyond the requirements of previous instruments. Convention No. 26 provides that minimum wage rates cannot be subject to abatement either "by individual agreement, nor, except with general or particular authorisation of the competent authority, by collective agreement" (Article 3(3)). Convention No. 99 provides that minimum wage rates shall be binding on the employers and workers concerned so as not to be subject to abatement, while allowing the possibility of individual exceptions to prevent curtailment of the opportunities of employment of workers with physical or mental disabilities (Article 3(4) and (5)). Convention No. 131 prohibits both individual exceptions and those introduced by collective agreement.

288. The Committee considers it necessary to make a few clarifications concerning the scope of Article 2 of Convention No. 131, and particularly its impact on the setting of minimum wages by collective agreement. The obligation to give force of law to the minimum wages that have been fixed does not imply that Convention No. 131 requires the introduction of a statutory minimum wage.¹ As the Committee emphasized in Chapter II, Convention No. 131 and Recommendation No. 135 offer a broad choice in

¹ In its response to the questionnaire drawn up in preparation for the second Conference discussion, the Government of Belgium indicated that "[e]xisting national systems may provide means of enforcement other than through the law, for example by leaving to employers and workers the possibility of requesting that decisions relating to wages be rendered obligatory". It had proposed the following text: "Minimum wages shall have the force of law or regulations, or give rise to rights, and shall not be subject to abatement." In its comments, the Office considered that the alternatives proposed by the Government of Belgium appear to be comprised within the provision that minimum wages should have the force of law. See ILC: *Minimum wage fixing machinery and related problems, with special reference to developing countries*, Report V(2), 54th Session, Geneva, 1970, pp. 12–13.

terms of means of application. Article 2(2) of Convention No. 131 provides that, subject to compliance with the binding nature of minimum wages, the freedom of collective bargaining shall be fully respected.² Moreover, Paragraph 6 of Recommendation No. 135 explicitly indicates that minimum wages may be fixed by giving the force of law to provisions of collective agreements. The requirement to give the force of law to minimum wages, irrespective of the procedure followed in fixing them, simply reflects the need for minimum wages to be legally binding for the employers and workers to whom they apply. With regard to minimum wages fixed by collective agreements, the Committee recalls that the Committee on Freedom of Association has established a number of principles relating to the obligation to negotiate in good faith, and specifically requiring agreements to be binding on the parties.³ This is the obligation set out in Convention No. 131, which does not require, however, all collective agreements setting minimum wages to be extended so that they apply to all workers and employers in a specific sector, or to all branches of activity in the country. The provisions of the Convention and the Recommendation regarding the scope of application of minimum wage systems, examined in Chapter I, should, however, also be taken into account. The Committee recalls in particular that, under the terms of Paragraph 4 of Recommendation No. 135, the number and groups of wage earners not protected by the minimum wage system should be kept to a minimum. In this light, and under certain conditions, including the representativity of the signatory organizations,⁴ the extension of collective agreements fixing minimum wages can play a very useful role in enabling the minimum wage policy to play an effective part in social protection.

² This reference to the binding nature of minimum wages was added in the texts proposed by the Office in preparation for the second Conference discussion, following the addition during the first discussion of a phrase calling for minimum wage fixing machinery to fully respect the freedom of collective bargaining. The Office emphasized that the principle that the freedom of collective bargaining should not be interpreted to include freedom for workers to negotiate wage rates lower than the minimum provided for by law is formally set out in Convention No. 26; no speaker had expressed a contrary view during the first discussion and it would have been a step backwards to permit any element of doubt regarding the intention of a new Convention on this important matter. See ILC: Report V(1), p. 36 and Report V(2), pp. 13–14 and p. 36, 54th Session, Geneva, 1970. During the second Conference discussion, the Committee on Minimum Wage adopted the text as proposed, following the rejection of an amendment submitted by the Government member of Cyprus. See ILC: *Record of Proceedings*, 54th Session, Geneva, 1970, pp. 379–380, paras 23–30.

³ ILO: *Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth edition (revised), Geneva, 2006, paras 939–943. See also B. Gernigon, A. Odero and H. Guido: *Collective bargaining: ILO standards and the principles of the supervisory bodies* (ILO, Geneva, 2000), p. 33.

⁴ On this topic, see ILO: *Freedom of association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, op. cit., paras 1050–1053. The Collective Agreements Recommendation, 1951 (No. 91), classified by the Governing Body as one of the up-to-date instruments, establishes in Paragraph 5 that: “(1) Where appropriate, having regard to established collective bargaining practice, measures, to be determined by national laws or regulations and suited to the conditions of each country, should be taken to extend the application of all or certain stipulations of a collective agreement to all the employers and workers included within the industrial and territorial scope of the agreement. (2) National laws or regulations may make the extension of a collective agreement subject to the following, among other, conditions; (a) that the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative; (b) that, as a general rule, the request for extension of the agreement shall be made by one or more organisations of workers or employers who are parties to the agreement; (c) that, prior to the extension of the agreement, the employers and workers to whom the agreement would be made applicable by its extension should be given an opportunity to submit their observations.”

289. The binding nature of the minimum wage is established in the legislation of many countries, including: *Armenia*,⁵ *Australia*,⁶ *Benin*,⁷ *Brazil*,⁸ *Costa Rica*,⁹ *Guyana*,¹⁰ *Indonesia*,¹¹ *Iraq*,¹² *Latvia*,¹³ *Lebanon*,¹⁴ *Luxembourg*,¹⁵ *Mexico*,¹⁶ *Niger*,¹⁷ *Russian Federation*,¹⁸ *South Africa*,¹⁹ *Tunisia*,²⁰ *Ukraine*,²¹ *United Kingdom*²² and *United States*.²³ In other countries, the legislation does not contain provisions explicitly mentioning the binding nature of minimum wages, although it is implied by the imposition of penalties in the event of non-compliance.

290. The legislation in some countries, however, provides for the possibility of the reduction of the applicable minimum wage through exceptions granted for certain workers. The Committee already mentioned in Chapter IV that this possibility exists in several countries in respect of persons with disabilities.²⁴ In the *Republic of Korea*,²⁵ for example, an employer may, with the authorization of the Ministry of Employment and Labor, make exceptions to the scope of minimum wage provisions for workers whose capacity for work is particularly diminished due to mental or physical disabilities. In

⁵ (2) ss 3(6) and 179(3).

⁶ Modern awards: (1) ss 45 and 206. National minimum wage: (1) ss 293, 294(2) and 206.

⁷ (1) s. 210.

⁸ (2) s. 76.

⁹ (2) s. 163.

¹⁰ (1) s. 13(1); (2) s. 12(1); (3) s. 3(1).

¹¹ (2) s. 90(1).

¹² (1) s. 47.

¹³ (2) s. 61(1).

¹⁴ (1) s. 44.

¹⁵ (1) s. L.222-7.

¹⁶ (2) s. 85.

¹⁷ (2) s. 44.

¹⁸ (2) s. 133.

¹⁹ (1) s. 56(1).

²⁰ (1) s. 134-3(3).

²¹ (3) s. 3. This is also the case in the following countries: *Albania*: (2) s. 111(1); *Antigua and Barbuda*: (1) s. C21(1); *Azerbaijan*: (2) s. 154(2); *Barbados*: (2) s. 12(1); *Plurinational State of Bolivia*: (2) s. 52; (3) s. 47; *Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina): (1) s. 69(2), (Republika Srpska): (5) s. 90; *Botswana*: (1) s. 138(1); *Cameroon*: (3) s. 2; *Canada*: (1) s. 178(1); *Chile*: (2) ss 42(a) and 44; *El Salvador*: (2) s. 148; *Ecuador*: (2) s. 81; *Guatemala*: (2) s. 91; *Honduras*: (3) s. 2; *Hungary*: (1) s. 136(1); *India*: (1) s. 12; *Japan*: (3) s. 4; *Kenya*: (2) s. 48(1); *Republic of Korea*: (3) s. 6(1) and (3); *Lao People's Democratic Republic*: (1) s. 46; *Lithuania*: (2) s. 187(3); *Malta*: (2) ss 4(4) and 42(1); *Republic of Moldova*: (1) s. 131(4); *Namibia*: (1) ss 13(2) and 70; *Nepal*: (1) s. 21(6); *Nicaragua*: (2) s. 82; (3) ss 3 and 10; *Panama*: (2) s. 142; *Romania*: (2) s. 164(2)–(3); *Serbia*: (1) s. 111; *Slovenia*: (1) s. 126(1); (2) s. 2; *Sri Lanka*: (1) s. 21; (3) s. 30; *United Republic of Tanzania*: (2) s. 41(1); and *Thailand*: (1) s. 90(1).

²² (1) s. 1(1).

²³ (1) s. 6(a)(1)(c).

²⁴ The Office emphasized in its comments on the replies received to the questionnaire drawn up in preparation for the second Conference discussion, which led to the adoption of Convention No. 131, that Article 1 of the draft Convention (determining the coverage of minimum wage systems) addressed these situations. See ILC: Report V(2), 54th Session, Geneva, 1970, p. 11.

²⁵ (3) s. 7(1); (4) s. 6.

Spain,²⁶ it is possible to sign a “low-productivity” contract with a worker with disabilities if the worker performs the normal number of hours of work, but is 25 per cent less productive than average; the reduction of the worker’s wage may not exceed this percentage. In *Japan*,²⁷ authorization may be granted to pay a worker with disabilities a minimum wage which is reduced in a proportion determined to take into account the worker’s capacity for work and other circumstances. The wage applicable to workers with disabilities is obtained by multiplying the minimum wage by the rate established in regulations issued by the Minister of Health, Labour and Welfare. In the United States, the Fair Labor Standards Act provides that the Secretary of Labor may, to the extent necessary to prevent curtailment of opportunities for employment, issue special certificates for the employment of individuals whose earning or productive capacity is impaired – notably because of a physical or mental deficiency, or an injury – at wages which are lower than the regular minimum wage, commensurate with those paid to non-handicapped workers, employed in the same area for similar work, and related to the individual’s productivity.²⁸

291. In *Portugal*,²⁹ the effective capacity for work of a worker with disabilities may be assessed at the request of the worker or the employer. When the gap between the capacity for work of a worker with and without disabilities is more than 10 per cent, the minimum wage is reduced by a rate proportionate to this difference which may not exceed 50 per cent. Individual exceptions for persons with disabilities exist in many other countries, including Botswana,³⁰ Gambia,³¹ Guyana,³² Honduras,³³ Kiribati,³⁴ Mauritius,³⁵ New Zealand,³⁶ Nigeria,³⁷ Saint Vincent and the Grenadines,³⁸ Sri Lanka³⁹ and Swaziland.⁴⁰ The possibility for exceptions is sometimes extended to other categories of workers. This is the case in *Japan*⁴¹ for workers on probation, as well as for those receiving vocational training or engaged in light work. The legislation in the *Republic of Korea*⁴² is more vague, as it refers to “[o]ther people to whom it is deemed inappropriate to apply the minimum wage”.

²⁶ (5) s. 12(c).

²⁷ (3) s. 7. This is also the case in the *Central African Republic*: (1) s. 269.

²⁸ (1) s.14(c)(1).

²⁹ (2) s. 275.

³⁰ (1) s. 139.

³¹ (1) s. 118.

³² (1) s. 12(1); (2) s. 13(1).

³³ (3) s. 32. These provisions also apply to workers whose capacity to earn their living is affected by their age.

³⁴ (2) s. 33.

³⁵ (1) s. 96(1).

³⁶ (1) s. 8(1).

³⁷ (3) s. 4.

³⁸ (1) s. 12(1).

³⁹ (1) s. 39; (2) s. 23(1); (3) s. 36.

⁴⁰ (3) s. 16.

⁴¹ (3) s. 7.

⁴² (3) s. 7.

292. In other cases, the possibility of exemption from the minimum wage is linked to the enterprise's financial situation. In *Malta*,⁴³ the employer may, in exceptional circumstances, in agreement with the employee or union representatives, provide for different conditions of employment than those specified in the Employment and Industrial Relations Act. This should be a temporary measure to avoid redundancies, provided that it is approved by the director responsible for employment and industrial relations, whose approval needs to be reviewed every four weeks. In the *Netherlands*,⁴⁴ the competent minister may, at the request of the employer or an employers' or workers' organization, fix for a specific category of workers employed in a particular enterprise, branch of activity or profession, and for a specific period, a minimum wage below the statutory minimum wage if he or she considers that the existence or scale of activities of the enterprise is under serious threat. This request may not result in a decision until it is certain that whoever submitted it has considered the issue with those employers' or workers' organizations which the minister considers to be representative.

293. In *Slovenia*,⁴⁵ when the Minimum Wage Act was adopted in 2010, it provided that, if payment of the minimum wage set out by law would result in a substantial loss for, and threaten the existence of, a company or would cause a considerable number of redundancies for business reasons, the employer could, for a transitional period not extending beyond 31 December 2011, make a gradual transition to the payment of the minimum wage. The employer was required to conclude a written agreement on the matter with the trade union in the enterprise or, in its absence, with the workers' council, within two months after the entry into force of the Act. The employer was also required to notify the labour inspectorate. The Act also set the reduced minimum wage rates applicable during this transitional period. According to the information available, over 1,600 enterprises made use of this possibility, and between 7,000 and 8,000 employees were subject to a transitional system.

294. In Ireland,⁴⁶ the Labour Court may exempt an employer due to financial difficulty from the obligation of paying an employee at a rate that is not lower than the national minimum hourly rate for between three months and one year. According to the information provided by the Government, no valid applications for temporary exemptions from the obligation to pay the national minimum wage have yet been made under this provision. In 2012, new legislation introduced the possibility of similar exemptions to the minimum wage fixed for certain sectors of the economy by employment regulation orders (EROs) and collective agreements registered with labour courts (registered employment agreements (REAs)). The requirements for these exemptions (inability to pay clauses) have nevertheless been relaxed. In particular, exemptions requested in cases of financial difficulty faced by an enterprise may be granted even if the majority of the employees concerned, their representatives or a trade union representing a majority of the workers are opposed to it.

⁴³ (2) s. 42(2).

⁴⁴ (1) s. 10(1).

⁴⁵ (2) ss 9–10.

⁴⁶ (1) s. 41; (2) ss 33A and 48A. See also Ireland – CEACR, Convention No. 26, direct request, 2013.

Section 2. Dissemination of information on applicable minimum wage rates

295. Under the terms of Paragraph 14(a) of Recommendation No. 135, measures to ensure the effective application of all provisions relating to minimum wages, as provided for in Article 5 of Convention No. 131, should include arrangements for giving publicity to minimum wage provisions in languages or dialects understood by workers who need protection, adapted where necessary to the needs of illiterate persons. This information may be disseminated in various ways.

296. Minimum wages are published in the official journal in many countries, including *Chile, Costa Rica, Ecuador, Gambia,*⁴⁷ *Guatemala, Guyana,*⁴⁸ *Honduras,*⁴⁹ *Israel,*⁵⁰ *Kenya,*⁵¹ *Mexico,*⁵² *Nepal,*⁵³ *Portugal, Serbia,*⁵⁴ *Slovakia,*⁵⁵ *Slovenia,*⁵⁶ *South Africa,*⁵⁷ *Spain, the former Yugoslav Republic of Macedonia,*⁵⁸ *United Republic of Tanzania*⁵⁹ and *Tunisia.*⁶⁰

297. Some governments indicated in their report that the minimum wage rates, and more generally the provisions in force on minimum wages, are disseminated more broadly through other publications. The Committee emphasized in paragraph 359 of its 1992 General Survey on minimum wages that, for practical reasons, the publication of minimum wage rates in the *Official Gazette* is not by itself sufficient to ensure that the employers and workers concerned are made aware of the rates in force. In *Nicaragua,*⁶¹ *Sri Lanka*⁶² and *Uruguay,*⁶³ minimum wages are published both in the *Official Gazette* and in the printed press. In Barbados, any new regulations on minimum wages for shop workers are publicized through notices in the printed and electronic media. In Hungary,

⁴⁷ (1) s. 115.

⁴⁸ (1) s. 8(4).

⁴⁹ (3) s. 30. The draft agreement fixing the minimum wage, prepared by the Minimum Wage Commission and approved by the Government, comes into effect 15 days after its publication in the *Official Gazette*.

⁵⁰ (1) s. 6.

⁵¹ (2) s. 46(2).

⁵² (2) s. 557(III).

⁵³ (1) s. 21(4).

⁵⁴ (1) s. 113.

⁵⁵ (3) s. 9(2). Publication in the *Gazette* of the Republic of Slovakia.

⁵⁶ (2) s. 6.

⁵⁷ (1) s. 50(3)(b) and (8)(d). Any variation of a determination of basic conditions of employment has to be published.

⁵⁸ (3) s. 4(2).

⁵⁹ (2) s. 39(1)(b).

⁶⁰ Decrees fixing the SMIG are published in Arabic and French in the *Official Gazette*. See Tunisia – CEACR, Convention No. 26, direct request, 2004. The publication of minimum wage rates in the *Official Gazette* is also provided for in the legislation of Botswana: (1) s. 135; Jordan: (1) s. 52(B); and Namibia: (1) s. 13 (1)(b).

⁶¹ (3) s. 10. The decisions of the National Minimum Wage Commission must be published in the *Official Gazette* and at least three other media, one of which is printed.

⁶² (1) s. 29(3). The decision fixing minimum wages must also be published in gazettes in the Sinhalese, Tamil and English languages.

⁶³ (3) s. 19(2). This is also the case in China: (2) s. 9.

Ireland, Pakistan and Poland, minimum wage rates are disseminated through the media. In the Philippines,⁶⁴ wage orders have to be published in the regional press 15 days before they come into force. In Tunisia,⁶⁵ the minimum wage rates, according to the Government, are published in the press, and press releases on this subject are broadcast on television and by national and regional radio. In some countries, information on minimum wages is available on official websites. This is the case in *Australia*,⁶⁶ *Belgium*,⁶⁷ *Chile*, *China*, *Costa Rica*, *El Salvador*, *France*, *Guatemala*, *Hungary*,⁶⁸ *Nicaragua*, *Panama*,⁶⁹ *Poland*,⁷⁰ *Portugal*, *Spain*, *United Kingdom* and *United States*.⁷¹

298. In some countries, employers are responsible for informing their employees of the applicable terms and conditions of employment, and especially current minimum wage rates. In South Africa,⁷² every employer on whom a sectoral determination establishing basic conditions of employment is binding is required to keep a copy of the determination available in the workplace at all times, make that copy available for examination by an employee and give a copy to an employee upon request (free of charge if the employee is a trade union representative). Employers are also required to post notices in *Antigua and Barbuda*,⁷³ *Burundi*,⁷⁴ *Cameroon*,⁷⁵ *Central African Republic*,⁷⁶ *El Salvador*,⁷⁷ *Gambia*,⁷⁸ *Honduras*,⁷⁹ *India*,⁸⁰ *Israel*,⁸¹ *Madagascar*,⁸² *Mali*,⁸³ *Nicaragua*,⁸⁴ *Niger*,⁸⁵ *Thailand*,⁸⁶ *Togo*,⁸⁷ *United States*⁸⁸ and *Uruguay*.⁸⁹

⁶⁴ (3) Book III, Rule VII, Chapter III, s. 4.

⁶⁵ Tunisia – CEACR, Convention No. 26, direct request, 2009.

⁶⁶ (1) ss 168 and 292. Minimum wages are published on the website of the Fair Work Commission.

⁶⁷ Interoccupational collective agreements, including those which fix minimum wage rates, are published on the site of the National Labour Council, while sectoral collective agreements are accessible via the website of the Federal Employment, Labour and Social Dialogue Service.

⁶⁸ In its report, the Government indicates that any person concerned can request additional information from the government authority responsible for employment via the public forum on its website.

⁶⁹ The executive decree fixing minimum wages, as well as a tool for calculating the minimum wage are available on the website of the Ministry of Labour.

⁷⁰ According to the Government's report, the minimum wage is published on the websites of the Ministry of Labour and Social Policy, Parliament and the Government Legislation Centre.

⁷¹ The Government's report indicates that the Wage and Hour Division of the Department of Labor publishes information about the minimum wage on its website, as well as providing users with e-tools such as virtual advisers.

⁷² (1) s. 58.

⁷³ (1) ss C21(12) and C22(5).

⁷⁴ (1) s. 80(1).

⁷⁵ (1) s. 64. The same is the case in Senegal: (1) s. L.111.

⁷⁶ (1) s. 229.

⁷⁷ (2) s. 158.

⁷⁸ (1) s. 119(1)(b) and (2). The employer is required to post in a prominent place at the workplace a notice containing the terms of the Joint Industrial Council agreement in a language that all the employees understand. The same is the case in Botswana: (1) s. 141(1)–(2); (2) s. 2(b).

⁷⁹ (3) s. 31.

⁸⁰ (1) s. 18(2).

⁸¹ (1) s. 6B.

⁸² (2) s. 57(3).

⁸³ (1) s. L.99.

Lastly, in *Japan*,⁹⁰ the *Republic of Korea*⁹¹ and the *United Republic of Tanzania*,⁹² employers are required to inform their employees of the applicable minimum wage by posting notices, or in other appropriate ways, while under the legislation in *Romania*,⁹³ employers have to notify their employees of the national minimum wage.

299. Some governments indicated in their report that services have been set up to allow any interested person to obtain information on minimum wages, assistance and advice. In *Australia*, workers and employers can obtain information and assistance from the Office of the Fair Work Ombudsman. In Belgium, the labour inspectorate has decentralized services and hotlines for citizens to obtain information, including on minimum wages. In the United Kingdom, the Government has established a helpline through which workers can report any abuse in the workplace and seek advice, for example on national minimum wage legislation. An information campaign has also been launched to help familiarize the most vulnerable workers with their fundamental labour rights and the means available to protect those rights. Several governments indicated that the labour inspection services are responsible, among other duties, for providing information on minimum wages. This is the case, for example, in Hungary, Poland, South Africa and Viet Nam. In Peru, according to the Government, these responsibilities have been delegated to the Department of Training and Labour of the Ministry of Labour and Employment Promotion.

Section 3. Authorities responsible for supervising the application of provisions pertaining to minimum wages

300. Article 5 of Convention No. 131 explicitly mentions adequate inspection among the appropriate measures to be taken to ensure the effective application of provisions relating to minimum wages. Paragraph 14(b) of Recommendation No. 135 specifies that these measures should include the employment of a sufficient number of adequately trained inspectors equipped with the powers and facilities necessary to carry out their duties.⁹⁴ The Committee recalls in this respect that Article 3(1)(a) of the Labour

⁸⁴ (3) s. 10.

⁸⁵ (2) s. 165.

⁸⁶ (1) s. 90(2).

⁸⁷ (2) s. 124.

⁸⁸ (2) s. 516(4). On its website, the Wage and Hour Division provides a downloadable model minimum wage poster to help with the obligation to post notices.

⁸⁹ (3) s. 19(4).

⁹⁰ (3) s. 8.

⁹¹ (3) s. 11; (4) s. 11.

⁹² (2) s. 39(6).

⁹³ (2) s. 164(4). A similar obligation also exists in China: (2) s. 11.

⁹⁴ The words “equipped with the powers and facilities necessary to carry out their duties” did not appear in the text initially proposed by the Office and were added by the working group established by the Committee on Minimum Wage during the first Conference discussion. The Employers’ Vice-Chairperson expressed concern that the provisions, as they were formulated, might have an adverse effect on other ILO instruments concerned with labour inspection; the Government member of *Brazil* expressed the same reservations. See ILC: *Record of Proceedings*, 53rd Session, Geneva, 1969, p. 684, paras 76–77.

Inspection Convention, 1947 (No. 81), and Article 6(1)(a) of the Labour Inspection (Agriculture) Convention, 1969 (No. 129), entrust the labour inspectorate with responsibility for securing the enforcement of the legal provisions relating to conditions of work, including those on wages.

301. In a large number of countries, enforcement of minimum wage legislation is indeed entrusted to the labour inspection services, usually composed of officials who have a special status in the civil service. The status and functions of labour inspectors are normally set out in general labour legislation,⁹⁵ either in a special law on labour inspection,⁹⁶ or in the legislation on wages.⁹⁷ In most countries, the legislation grants labour inspectors extensive powers.⁹⁸ They are generally authorized to enter workplaces freely and without previous notice to undertake inspections; carry out any examination, test or inquiry which they may consider necessary to ensure that legal provisions are being strictly observed; to require the production of any books, registers or documents, the keeping of which is prescribed by the labour legislation; and to enforce the posting of rules and notices required by the legal provisions. Labour inspectors may also make suggestions to the employer and workers and draw up written observations, warnings and violation reports. They often have discretionary power as to whether to draw up a violation report. In some countries, labour inspectors themselves have the power to impose penalties in the event of violations of provisions related to the minimum wage. This is the case, for example, in *Albania*,⁹⁹ *Burkina Faso*,¹⁰⁰ *Lithuania*,¹⁰¹ *Nepal*,¹⁰² *Netherlands*,¹⁰³ *Nicaragua*¹⁰⁴ and *Romania*.¹⁰⁵ The Committee refers in this regard to

⁹⁵ Argentina: (8) s. 28; Barbados: (1) s. 5; Benin: (1) ss 274–277; Bulgaria: (2) s. 399; *Burkina Faso*: (1) s. 391(2); Burundi: (1) ss 154–165; Canada (federal): (1) s. 249, 251 and 251.1; *Central African Republic*: (1) s. 318–329; *Chile*: (2) s. 191; Colombia: (2) ss 485–486; *El Salvador*: (2) s. 628; Gambia: (1) ss 4–5; *Guatemala*: (2) s. 278; Lao People’s Democratic Republic: (1) ss 71–73; *Malta*: (2) s. 43; Mauritania: (1) ss 369–377; Namibia: (1) ss 124–127; *Nepal*: (1) s. 65; Russian Federation: (2) ss 354–359; Senegal: (1) ss L.190–L.198; Tunisia: (1) s. 170; Turkey: (2) s. 91; United States: (1) ss 4(a) and 11(a); and Viet Nam: (1) ss 237–239. This is also the case in *France*: (1) s. L.8112-1; *Cameroon*: (1) s. 109. In some comments on the application of the Convention, the Cameroon Trade Union Congress (CTUC) indicated that the inspection services do not have sufficient personnel or material means to compel employers committing violations to apply the minimum wages regulations. See *Cameroon* – CEACR, Convention No. 131, direct request, 2012. See also *Guatemala* – CEACR, Convention No. 131, observation, 2012.

⁹⁶ Algeria: (4); *Antigua and Barbuda*: (2) s. 5; *Armenia*: (5); *Costa Rica*: (9) s. 24; Hungary: (4); Jamaica: (2); Jordan: (3); *Republic of Moldova*: (4); Slovakia: (5).

⁹⁷ Bahamas: (2) ss 11–12; *Republic of Korea*: (3) s. 26; Honduras: (3) s. 41 and (6) s. 4; Israel: (1) s. 15B; *Japan*: (3) s. 31; Nigeria: (3) s. 6(1)–(3); *Sri Lanka*: (1) ss 52–55; *Zambia*: (2) s. 5(1).

⁹⁸ Argentina: (8) s. 32; Benin: (1) s. 274; Bulgaria: (2) s. 402; Canada (federal): (1) s. 249(2)–(3); Gambia: (1) ss 8 and 21; India: (1) s. 19(2); Luxembourg: (1) ss L.612-1, L.614-3 and L.614-4; Madagascar: (2) ss 238–239; *Morocco*: (1) s. 533; Philippines: (2) s. 128(a)–(b); Russian Federation: (2) s. 357; Thailand: (1) s. 139; (4) s. 37; Tunisia: (1) ss 174 and 177; Turkey: (2) s. 92.

⁹⁹ (3) s. 33(1)(a).

¹⁰⁰ (1) s. 396.

¹⁰¹ (3) s. 7(10).

¹⁰² (1) s. 55. The penalties may be imposed by the labour office. In its 2012 report on the application of the Convention, the Government indicated that it was very difficult to enforce the Convention in the informal economy, where the majority of workers were engaged, but that it was making efforts to strengthen labour offices in order to address this problem.

¹⁰³ (1) s. 18(c). This possibility has been available to labour inspectors since 2007. Previously, workers with complaints had to act for themselves by initiating a civil action or reporting the matter to the labour inspectorate. See *Netherlands* – CEACR, Convention No. 131, direct request, 2008. Measures were also adopted in 2011 to improve law enforcement.

its 2006 General Survey on labour inspection, in which it examined in detail the requirements under Conventions Nos 81 and 129. In Argentina,¹⁰⁶ for example, the legislation specifically mentions these two Conventions and requires the Minister of Labour to ensure that the labour inspection services comply with their requirements.

302. In certain cases, the enforcement of labour legislation, especially in relation to the minimum wage, may be divided between various bodies. An inspection service may therefore be established locally, while coming under the responsibility of the national inspection service. This is the case in India,¹⁰⁷ Indonesia¹⁰⁸ and the Bolivarian Republic of Venezuela.¹⁰⁹ In Peru, the enforcement of legislation was previously decentralized at the regional level. It is now entrusted to the national authority for the enforcement of labour legislation (SUNAFIL).¹¹⁰ In other countries, certain sectors are covered by a specifically appointed team of inspectors. For example, in *Morocco*,¹¹¹ the enforcement of minimum wage legislation in the agricultural and mining sectors is ensured by specialized teams of inspectors, distinct from the general labour inspectorate. The same applies in Austria¹¹² in the agricultural sector. In South Africa,¹¹³ labour inspectors do not have the competence to supervise the application of collective agreements concluded by collective bargaining councils; this is the function of specific inspectors from these councils.

303. In several countries, governmental authorities other than the labour inspectorate enforce labour legislation, especially with regard to minimum wages. In the United Kingdom,¹¹⁴ this lies with Her Majesty's Revenue and Customs (HMRC).¹¹⁵ In Germany, according to the Government's report, the customs administration also performs these duties. In *Australia*,¹¹⁶ the Office of the Fair Work Ombudsman helps employees, employers and the community to understand and implement the fair work system. It provides information and advice, conducts investigations in the event of complaints and supervises compliance with Commonwealth labour legislation. In

¹⁰⁴ (4) s. 57. Section 46(a) establishes special rapid procedures for presumed violations, especially where the violation observed concerns non-compliance with wage regulations. The inspector reports to his or her superior (the regional or departmental inspector), who initiates proceedings and issues a decision.

¹⁰⁵ (2) s. 260.

¹⁰⁶ (8) ss 29(a) and (c) and 30.

¹⁰⁷ (1) s. 19(1) and (3). There are inspection services at the central State and local government levels.

¹⁰⁸ (2) s. 178. Inspection services are established at the national, provincial, district and municipal levels.

¹⁰⁹ (2) s. 506. Each federate state has a labour inspection service, under the People's Ministry of Labour and Social Security.

¹¹⁰ (11) ss 3, 4 and 18.

¹¹¹ (1) s. 530.

¹¹² (4) ss 111–119. In 2012, the specialized labour inspectorate for the transport sector was incorporated into the general labour inspectorate. See Austria – CEACR, Convention No. 81, observation, 2013.

¹¹³ (1) s. 63; (2) s. 33.

¹¹⁴ (1) ss 13–14.

¹¹⁵ The Government indicates in this respect that HMRC officials carry out checks chiefly on the basis of complaints lodged by workers and existing risks of non-compliance in low-wage sectors. See also Department for Business, Innovation and Skills: *National minimum wage compliance strategy*, March 2010.

¹¹⁶ (1) ss 696 and 706.

Tunisia¹¹⁷ and Mauritania,¹¹⁸ the legislation provides that the police authorities retain their powers to search and punish labour legislation offences.

304. Some countries have increased their efforts to improve compliance with applicable minimum wages. In *Costa Rica*, particularly in view of the inadequate numbers of labour inspectors,¹¹⁹ the Government decided in 2010 to launch a national campaign to promote compliance with the payment of minimum wages (*Campaña Nacional de Respeto al Pago de los Salarios Mínimos*). The campaign has two parts: on the one hand, information and advice are provided to employers and workers to promote a culture of compliance with labour legislation; and, on the other, inspections are carried out focusing on minimum wages and other violations of workers' economic rights. In addition to these initiatives, an electronic system has been introduced giving inspectors access to the files on inspected enterprises and on individuals whose rights have not been respected.¹²⁰ In Israel, under a new law introduced in June 2012, employers if they so wish may be inspected from time to time to check whether the working conditions of their employees are in compliance with labour legislation. In addition, following the conclusion of an agreement with the General Federation of Labour (FGL), the Government introduced a multi-year plan to increase the number of officials responsible for the enforcement of labour legislation and expressed the intention of focusing supervision on violations by employers whose employees earn low wages, including temporary and foreign workers.

Section 4. Penalties for non-compliance with the applicable minimum wages

305. In accordance with Article 2(1) of Convention No. 131, failure to apply minimum wages shall make the person or persons concerned liable to appropriate penal or other sanctions,¹²¹ while Paragraph 14(c) of Recommendation No. 135 reaffirms that the

¹¹⁷ (1) s. 178.

¹¹⁸ (1) s. 381.

¹¹⁹ This issue was raised in the observations of the Confederation of Workers *Rerum Novarum* (CTRN), which indicated that almost one third of the active population earned wages lower than the current minimum wage. See *Costa Rica* – CEACR, Convention No. 131, observations, 2012 and 2013.

¹²⁰ According to the information provided by the Government, 27,275 inspections focusing on minimum wages were carried out between August 2010 and September 2012. Data compiled by the Government show a 2.4 per cent reduction in the violations recorded between 2009 and 2011, and a reduction of 7 per cent in the case of women workers. The most significant reduction was among professional categories of unskilled workers and in small enterprises. The Government emphasizes that the focus on workers' economic rights has also improved compliance with other labour rights; see Ministry of Labour and Social Welfare: *Situación actual del pago de los salarios mínimos*, December 2012. See also J.D. Trejos Solórzano: *La aplicación de los salarios mínimos en Costa Rica con énfasis en el sector rural* (ILO, 2013).

¹²¹ During the two Conference discussions, the Employer members opposed the inclusion of a reference to penal sanctions, pointing out that such a reference could be interpreted as leading to the possibility of the imprisonment of employers, which would not be conducive to good industrial relations. They also considered that it was superfluous to refer to penal sanctions, as the term "appropriate sanctions" would include them in so far as they were called for under national conditions. The Worker members and several Government members opposed the amendment proposed by the Employer members because in many developing countries the threat of imprisonment was the only effective deterrent against the failure of employers to pay the minimum wage. They also emphasized that the proposed draft Convention left governments the freedom to decide on the matter. The proposed amendment was finally rejected. See ILC: *Record of Proceedings*, 53rd Session, Geneva, 1969, p. 681, point 5; ILC: *Record of Proceedings*, 54th Session, Geneva, 1970, p. 379, paras 18–22.

measures to ensure the effective application of provisions relating to minimum wages should include adequate penalties for the infringement of these provisions.

306. In most countries, the legislation establishes penalties for the violation of minimum wage provisions. These penalties are very often financial, as is the case in *Albania*,¹²² *Bosnia and Herzegovina*,¹²³ *Bulgaria*,¹²⁴ *Central African Republic*,¹²⁵ *Chile*,¹²⁶ *Costa Rica*,¹²⁷ *El Salvador*,¹²⁸ *Ecuador*,¹²⁹ *Iraq*,¹³⁰ *Israel*,¹³¹ *Japan*,¹³² *Luxembourg*,¹³³ *Mozambique*,¹³⁴ *Nigeria*,¹³⁵ *Panama*,¹³⁶ *Seychelles*,¹³⁷ *Slovenia*,¹³⁸ *Timor-Leste*,¹³⁹ *Togo*,¹⁴⁰ *United Kingdom*,¹⁴¹ *Uruguay*¹⁴² and *Bolivarian Republic of Venezuela*.¹⁴³ The legislation in certain countries provides that a fine is to be applied for each violation. This is the case in *Algeria*,¹⁴⁴ *Argentina*,¹⁴⁵ *Benin*,¹⁴⁶ *Cameroon*,¹⁴⁷ *Croatia*,¹⁴⁸

¹²² (2) s. 202(2).

¹²³ Federation of Bosnia and Herzegovina: (1) s. 140(41); Republika Srpska: (5) s. 180(1)(29).

¹²⁴ (2) s. 414(1).

¹²⁵ (1) s. 389.

¹²⁶ (2) s. 506. The amount of the fine varies depending on the size of the enterprise.

¹²⁷ (2) ss 608 and 614–615. The courts will take into account the seriousness of the case, the number of violations committed and the number of workers affected.

¹²⁸ (2) s. 627. The seriousness of the violation and the perpetrator's financial capacity are taken into account. In addition, decrees fixing minimum wages specifically establish penalties for non-compliance with their provisions.

¹²⁹ (2) s. 628. The circumstances, seriousness of the violation and the perpetrator's financial capacity are taken into account.

¹³⁰ (1) s. 53.

¹³¹ (5) s. 3 and Schedule 2, Part III (10)–(11).

¹³² (3) s. 40. Only non-compliance with regional minimum wages and special minimum wages for seafarers may be sanctioned with a fine.

¹³³ (1) s. L.223-3.

¹³⁴ (2) s. 267(1)(a) and (2). The amount of the fine (between five and ten times the minimum wage) depends on the seriousness of the violation. A labour inspector who records a violation sanctions the employer with the minimum fine established; the employer may then contest the legitimacy of the penalty with the inspector's superior. Should the penalty be confirmed, the fine may then be fixed at a higher amount, within the limits set out in the legislation.

¹³⁵ (3) s. 3(1).

¹³⁶ (2) s. 180.

¹³⁷ (3) s. 5(a).

¹³⁸ (2) s. 8.

¹³⁹ (1) s. 99.

¹⁴⁰ (2) s. 295(2).

¹⁴¹ (1) ss 19A(4)–(6), 31(1) and (9). Any offence under the national minimum wage legislation automatically incurs a penalty of 50 per cent of the total amount of the wage arrears due to workers. Nevertheless, the amount of the penalty can be no less than £100 and no greater than £5,000. Furthermore, an employer who commits an offence is liable to conviction to a fine not exceeding level 5 on the standard scale.

¹⁴² (3) s. 31.

¹⁴³ (2) ss 130 and 533. This is also the case in *Azerbaijan*: (3) s. 53.3; *Bahamas*: (2) s. 5(2); *Gabon*: (1) s. 195(b); (3) s. 5; *Guatemala*: (2) s. 272(c); *Honduras*: (3) s. 40; *Jordan*: (1) s. 53; *Madagascar*: (2) s. 257(1); *Malta*: (2) s. 45(1); *Mauritius*: (1) s. 95(2); *Poland*: (2) s. 282; *Serbia*: (1) s. 273(4); *Tunisia*: (1) s. 3; *Turkey*: (2) s. 102(a); *Ukraine*: (3) s. 36; and (4) s. 41.

¹⁴⁴ (1) s. 149(1). Under the legislation, an employer in breach of the law is fined between 1,000 and 2,000 Algerian dinars (equivalent to US\$12.50 and US\$25 respectively). The Committee emphasized that the

France,¹⁴⁹ Islamic Republic of Iran,¹⁵⁰ *Morocco*¹⁵¹ and Tunisia.¹⁵² In Canada (Alberta),¹⁵³ the legislation provides that if an employee accepts to work for less than the minimum wage, both the employer and the employee are guilty of an offence and are liable to a financial penalty. In Israel, a law to enhance the enforcement of labour legislation, which came into force in June 2012 introduced the possibility of initiating administrative proceedings to impose a financial penalty or issuing a warning to an employer, with the aim of focusing criminal proceedings on the most serious violations of labour legislation, while allowing less serious violations to be dealt with rapidly and efficiently. It is envisaged that cases in which financial penalties are applied will be published on the website of the Ministry of Industry, Trade and Labour (MOITAL).¹⁵⁴

307. Under the legislation in certain countries, employers who fail to comply with minimum wage provisions are liable to a fine, imprisonment or, in some cases, both. This is the case in Barbados¹⁵⁵ (in the sugar industry), Belgium¹⁵⁶ (for employers violating the provisions of collective labour agreements that have been declared binding), Botswana,¹⁵⁷ India,¹⁵⁸ Indonesia,¹⁵⁹ *Republic of Korea*,¹⁶⁰ *Lebanon*,¹⁶¹ Mauritania,¹⁶² *Mexico*,¹⁶³ Pakistan,¹⁶⁴ Philippines,¹⁶⁵ *Zambia*¹⁶⁶ and Zimbabwe.¹⁶⁷

financial penalties did not perhaps have the desired dissuasive effect on account of their low level. It drew the Government's attention to the need to set the fines at levels conducive to preventing abuses and encouraging employers to apply the minimum wage to their workers. See Algeria – CEACR, Convention No. 99, direct request, 2012.

¹⁴⁵ (9) ss 3(c) and 5(2).

¹⁴⁶ (1) ss 302 and 309.

¹⁴⁷ (1) ss 167 and 172. The amount of the fine is multiplied by the number of workers affected.

¹⁴⁸ (2) s. 10.

¹⁴⁹ (1) s. R.3233-1(1)(1), and (2); Penal Code, ss 132-11 and 132-15.

¹⁵⁰ (1) s. 174. For each underpaid worker, the employer is liable to a fine, the amount of which varies depending on the number of workers affected by the offence.

¹⁵¹ (1) s. 361.

¹⁵² (1) ss 3, 234 and 236. The fine is imposed for each person employed under conditions not in compliance with the law, although the total fine may not exceed a predetermined ceiling.

¹⁵³ Alberta: (2) s. 130(1). According to the Government, this provision intends to deter employers and employees from entering into arrangements that are incompatible with public policy but in practice no employee has ever been prosecuted for having received a sub-minimum payment. The Committee recalled the requirement of the Convention that in the cases of underpayment, workers are entitled to recover, by legalized proceedings, the amount due and not to be prosecuted for a minimum wage violation. See Canada – CEACR, Convention No. 26, direct request, 2012. Similarly, in Manitoba, if an employee, in collusion with the employer, works for less than the prescribed minimum wage, both the employer and the employee are guilty of an offence: (7) s. 139.

¹⁵⁴ (5). See T. Eliav, M. Endeweld, D. Gottlieb and I. Kachanovski: *Trends in minimum wage law compliance: The case of Israel*, Research and Planning Administration, National Insurance Institute, Jerusalem, Israel, June 2009 (only the summary is available in English); OECD: *OECD economic surveys: Israel, Overview* (Paris, December 2011); State of Israel, Ministry of Industry, Trade and Labour: *Progress report on the implementation of the OECD recommendations: Labour market and social policies – Israel*, June 2012.

¹⁵⁵ (5) s. 6(1)(a).

¹⁵⁶ (2) ss 56–57.

¹⁵⁷ (1) ss 138(2) and 151(d).

¹⁵⁸ (1) s. 22(a).

¹⁵⁹ (2) s. 185.

¹⁶⁰ (3) s. 28.

308. Moreover, the legislation in certain countries draws a distinction between an employer as an individual and as a corporate entity. This is the case, for example, in *Australia*,¹⁶⁸ *Canada (Ontario)*,¹⁶⁹ *Cuba*,¹⁷⁰ *Czech Republic*,¹⁷¹ and *Republic of Moldova*.¹⁷² The applicable penalties may also be increased in the case of repeat offences. In *South Africa*,¹⁷³ for example, the legislation provides for a system of fines the amount of which gradually increases based on the number of repeat offences. In *Panama*¹⁷⁴ and *Tunisia*¹⁷⁵ the amount of the fine is doubled, while in *France*¹⁷⁶ a repeat offence is penalized by a fine of double the amount for individuals, and ten times the amount for legal entities. Increased financial penalties are also envisaged in *Antigua and Barbuda*,¹⁷⁷ *Argentina*,¹⁷⁸ *Plurinational State of Bolivia*,¹⁷⁹ *Brazil*,¹⁸⁰ *Burkina Faso*,¹⁸¹ *Ecuador*,¹⁸² *Guyana*,¹⁸³ *Honduras*,¹⁸⁴ *Netherlands*,¹⁸⁵ *Niger*,¹⁸⁶ *Portugal*,¹⁸⁷ *Spain*¹⁸⁸

¹⁶¹ (1) ss 107–108. Any violation of the Labour Code is punishable by a fine and/or a prison sentence. If payment of the minimum amount for the fine is made within three days of the date of the compliance notice, the offender is not taken to court, except in the case of a repeat offence.

¹⁶² (1) ss 434 and 439.

¹⁶³ (2) s. 1004. The penalty varies depending on the amount of underpaid wages.

¹⁶⁴ (2) s. 9(3); (3) s. 7.

¹⁶⁵ (4) 12; (5) ch. II s. 10.

¹⁶⁶ (2) s. 4(4).

¹⁶⁷ (1) s. 6(2).

¹⁶⁸ (1) s. 546(2).

¹⁶⁹ (20) s. 132(b)–(c). An employer as a corporation is liable to a fine, while an employer as an individual is liable to a fine and/or imprisonment.

¹⁷⁰ (3) s. 21.

¹⁷¹ (5) ss 13(1)(b) and (2)(c), 26(1)(b) and (2)(c), and 36.

¹⁷² (5) ss 55 and 57.

¹⁷³ (1) Schedule 2.

¹⁷⁴ (2) s. 180.

¹⁷⁵ (1) s. 237.

¹⁷⁶ (1) s. R.3233-1(3) and (4); and Penal Code, ss 132-11 and 132-15.

¹⁷⁷ (1) s. C23(1).

¹⁷⁸ (9) s. 5(4).

¹⁷⁹ (3) ss 47 and 165. See also *Plurinational State of Bolivia* – CEACR, Convention No. 131, observation, 2013.

¹⁸⁰ (2) s. 120.

¹⁸¹ (1) s. 421(1)(2).

¹⁸² (2) s. 632.

¹⁸³ (1) s. 13(1).

¹⁸⁴ (3) s. 40.

¹⁸⁵ (1) s. 18(f).

¹⁸⁶ (2) ss 350(b) and 360.

¹⁸⁷ (2) ss 273(3), 554(4) and 561. The amount of fines varies depending on enterprise turnover. In observations on the application of Convention No. 131, the General Union of Workers (UGT) emphasized that the Labour Code does not penalize non-compliance with the minimum wage applicable for apprentices, trainees and interns. See *Portugal* – CEACR, Convention No. 131, observation, 2013.

¹⁸⁸ (3) ss 7(10), 40(1) and 41.

and *Sri Lanka*.¹⁸⁹ In some cases, fines may be increased and combined with a prison sentence for repeat offences. Increases in financial penalties are also established in Benin,¹⁹⁰ Gabon¹⁹¹ and Togo.¹⁹² In the United States, information communicated by the Government indicates that an employer who infringes minimum wage legislation is sanctioned by a fine and, in the case of repeat offences, by a prison sentence of up to six months. In Mauritania,¹⁹³ if an offence is repeated within three years, the employer is liable to an increased fine and, on the third violation within this period, to a prison sentence.

309. Other penalties may also be imposed for non-compliance with minimum wage provisions. In the *Plurinational State of Bolivia*,¹⁹⁴ the establishment may be closed down. In Hungary, according to the Government's report, an employer who is not in compliance with minimum wage legislation may, in some cases, be prohibited from applying for state subsidies. In Italy, according to information provided by the Government, an employer who fails to give effect to an injunction by the labour court to pay a worker the wages due forfeits the benefit of reductions on social security contributions. In addition, the judicial authorities may order the exclusion of enterprises paying wages below the minimum wage from calls for tenders for public contracts. In *Nicaragua*,¹⁹⁵ following a third offence, a decision may be taken by the Minister of Labour, based on the reports of labour inspectors, to close the enterprise temporarily for a period of up to four months. In *Portugal*,¹⁹⁶ the legislation provides, under certain conditions, for penalties such as the publication of the violation, the prohibition of operations and the prohibition of access to public contracts. In the Russian Federation, according to the Government's report, an employer who is in violation of the labour legislation is liable, in addition to a fine, to the administrative suspension of activities for a period of up to 90 days. The Government also indicates that repeat offences are punished by a fine or withdrawal of the right to exercise an activity for a period of between one and three years. In Viet Nam, according to the Government's report, administrative penalties, including the withdrawal of the licence, may be applied depending on the nature and seriousness of the offence. Finally, in some countries, infringements of the minimum wage legislation are published on the website of the competent ministry or labour inspectorate. Such measures have been adopted in Canada (Quebec),¹⁹⁷ Israel¹⁹⁸ and the United Kingdom.¹⁹⁹

¹⁸⁹ (1) s. 44. The employer also pays an additional fine for each day for which the violation continues after conviction.

¹⁹⁰ (1) s. 302. The financial penalty may be increased in cases of repeat offences and combined with a prison sentence of between 15 days and two months.

¹⁹¹ (1) s. 195(b); (2) s. 5. An employer who repeats an offence is liable to a financial penalty the amount of which is doubled or imprisonment of from two to six months, or both.

¹⁹² (2) s. 295(2). Employers who repeat offences incur an increased fine and a prison sentence of between ten days and one month.

¹⁹³ (1) ss 434 and 439.

¹⁹⁴ (3) s. 165.

¹⁹⁵ (4) ss 52 and 57(c).

¹⁹⁶ (2) s. 562.

¹⁹⁷ The annual list of offences against labour legislation, and particularly minimum wage violations, is published on the website of the Labour Standards Commission: <http://www.cnt.gouv.qc.ca/?id=968>.

¹⁹⁸ Ministry of Industry, Trade and Labour: *Progress report on the implementation of the OECD recommendations: Labour market and social policies – Israel*, June 2012, p. 11.

Section 5. Right of workers to recover wages due

310. Under Paragraph 14(d) of Recommendation No. 135, the measures to ensure the effective application of all provisions relating to minimum wages should include the simplification of legal provisions and procedures, and other appropriate means of enabling workers effectively to exercise their rights under minimum wage provisions, including the right to recover amounts by which they may have been underpaid. Indeed, the protection of workers would not be effective if the imposition of sanctions were not accompanied by measures to ensure that workers recover the amounts by which they have been underpaid by the employer in respect of the minimum wage, as the Committee emphasized in its 1992 General Survey (paragraph 382).

311. Under the legislation in many countries, workers have the right to recover the amounts due if they have been underpaid in respect of the applicable minimum wage through courts or tribunals. This is the case in *Antigua and Barbuda*,²⁰⁰ *Plurinational State of Bolivia*,²⁰¹ *Costa Rica*,²⁰² *Czech Republic*,²⁰³ *Guatemala*,²⁰⁴ *Guyana*,²⁰⁵ *Indonesia*,²⁰⁶ *Iraq*,²⁰⁷ *Israel*,²⁰⁸ *Kenya*,²⁰⁹ *Malta*,²¹⁰ *Nepal*,²¹¹ *Netherlands*,²¹² *Nicaragua*,²¹³ *Poland*,²¹⁴ *Slovakia*,²¹⁵ *Sri Lanka*,²¹⁶ *United Republic of Tanzania*,²¹⁷ *United States*,²¹⁸ *Uruguay*,²¹⁹ *Viet Nam*²²⁰ and *Zambia*.²²¹ In *Burkina Faso*,²²² the

¹⁹⁹ Since January 2011, the HMRC can refer cases of employers who violate minimum wage legislation to the Department for Business, Innovation and Skills, provided that certain conditions are met relating, for example, to the nature of the offence, its gravity and the amount owed, and also on condition that criminal proceedings initiated in parallel have been concluded. The Department then decides whether to publish a notice concerning the offence in the press. See Department for Business, Innovation and Skills: *Policy on HM Revenue and Customs enforcement, prosecutions and naming employers who flout national minimum wage law* (London, June 2012).

²⁰⁰ (1) s. C23(2).

²⁰¹ (3) s. 47.

²⁰² (2) s. 610.

²⁰³ (2) s. 111(3).

²⁰⁴ (4) s. 6.

²⁰⁵ (1) s. 13(3); (2) s. 12(2).

²⁰⁶ (2) s. 96.

²⁰⁷ (1) s. 53. The employer must pay the worker concerned double the difference between the wage paid and the minimum wage.

²⁰⁸ (1) ss 7 and 18A.

²⁰⁹ (2) s. 48(3) and (5).

²¹⁰ (2) s. 45(2).

²¹¹ (1) s. 55(2).

²¹² (2) s. 3. The employer also has to pay a penalty of €300 per worker per day if the amounts owed to the workers concerned are not paid within four weeks.

²¹³ (3) s. 12. The Ministry of Labour is required to provide the worker in question with free advice.

²¹⁴ (2) s. 242.

²¹⁵ (2) s. 120(1).

²¹⁶ (1) ss 3D(2) and 4(2), (2A) and (3).

²¹⁷ (2) s. 41(3).

²¹⁸ (1) s. 16(b).

²¹⁹ (3) s. 4. The employer may also be ordered to pay damages of up to 50 per cent of the wages owed.

courts have recognized the binding nature of minimum wage rates, under the terms of Conventions Nos 26 and 131, and have accordingly awarded workers who have been underpaid the difference in their pay. In Honduras,²²³ the workers concerned may seek damages in addition to the wages owed. In Barbados²²⁴ and Mauritius,²²⁵ in addition to a fine, the courts may require the employer to pay the amounts due to a worker who has been underpaid. In Gambia,²²⁶ Nigeria²²⁷ and Zimbabwe,²²⁸ a court may order the employer to pay compensation to workers paid below the minimum wage, without prejudice to the workers' right to recover the sums due. In several countries, such as Bulgaria,²²⁹ Burundi,²³⁰ Hungary²³¹ and Seychelles,²³² the legislation establishes in general that workers can bring any issue arising out of the employment relationship, including minimum wage issues, to court.

312. In certain countries, a recovery claim may be made to an administrative authority. In Barbados,²³³ according to the Government's report, any worker may make a complaint to the Ministry of Labour, either in person or anonymously by telephone. The Government of Seychelles reports the existence of a similar procedure with the Ministry of Labour and Human Resource Development. In India,²³⁴ claims for the payment of the shortfall in wages may be made to the competent authorities designated by the Government, normally the labour commissioner. Collective action involving a number of workers is also possible. In the Philippines,²³⁵ the Regional Director of the Department of Labor and Employment is empowered to hear and decide any matter involving the recovery of unpaid wages. Finally, in Lao People's Democratic Republic, workers first have to make their claims to their employers. If agreement is not reached, they may then appeal to the labour administration.²³⁶

²²⁰ (4) s. 10(6)(c).

²²¹ (2) s. 4(5). This is also the case in New Zealand: (2) s. 11; and Senegal: (1) ss L.126 and L.229.

²²² See *Burkina Faso* – CEACR, Convention No. 131, direct request, 2013.

²²³ (3) ss 39 and 43.

²²⁴ (2) s. 12(2).

²²⁵ (1) s. 95(5).

²²⁶ (1) ss 29(1) and 117.

²²⁷ (3) s. 3(2).

²²⁸ (1) s. 20(4) and (6). Similar provisions exist in Botswana: (1) s. 138(4)(a).

²²⁹ (2) ss 357 and 360(1).

²³⁰ (1) s. 179.

²³¹ (1) s. 285.

²³² (2) s. 64. The Seychelles Federation of Workers' Unions considers that employment tribunals should automatically consider such matters, even where workers have not made the necessary claim, particularly where they are not aware of the applicable minimum wage rates.

²³³ In its comments on the application of Convention No. 26 by Barbados, the Barbados Workers' Union (BWU) emphasized that the difficulties related to the residence status of most migrant domestic workers prevent them from filing complaints, and it suggested the possibility of creating a "crisis hotline" to offer advice to workers. See *Barbados* – CEACR, Convention No. 26, direct request, 2013.

²³⁴ (1) ss 20(1), (2) and (5), and 21. A claim may be made by the worker, the worker's representative, or an organization representing registered workers and authorized in writing to act on behalf of the worker. It may also be filed by the labour inspector.

²³⁵ (2) s. 129; (3) Rule XI, s. 1. In Jordan, it is the wage authority that may receive relevant claims: (1) s. 54.

²³⁶ (1) ss 62–63.

313. The legislation in certain countries establishes a complaint procedure with the labour inspection services. In Madagascar,²³⁷ complaints regarding wage payments have to be made to the labour inspectorate to seek an amicable settlement and, if that is not possible, to the competent labour court. In Slovakia,²³⁸ the labour inspectorate is authorized to receive all complaints made by workers and their representatives. In the Bolivarian Republic of Venezuela,²³⁹ the legislation establishes a general procedure through which complaints can be made to the labour inspectorate by a worker or group of workers. In Belgium, according to the information provided by the Government, in cases in which the employer fails to comply with the minimum wage rates, workers may also make a complaint directly to the labour inspection services.

314. Labour inspectors who find a violation to the minimum wage provisions during inspections are sometimes empowered to order the payment of wage arrears. This is the case in Canada (federal),²⁴⁰ South Africa²⁴¹ and Thailand.²⁴² This is also the case in Seychelles, Turkey and the United States, according to the information provided by their governments.

Section 6. Role of employers' and workers' organizations

315. Recommendation No. 135 refers in Paragraph 14(e) to the importance of associating employers' and workers' organizations in efforts to protect workers against abuses. This role is often carried out through the provision to their members with information and advice, which is clearly part of the general action by trade unions to protect employees' rights. According to the information supplied by the Government of Belgium in its report, the social partners, who determine minimum wages through collective labour agreements, have a moral obligation to give effect to these agreements correctly and to inform their members of their contents. In the United States, according to the Government's report, the Wage and Hour Division works with workers' and employers' organizations and with civil society to share information on the minimum wage and facilitate the application of the legislation. Similarly, the Government of Indonesia indicates that workers' and employers' organizations are associated with the dissemination of information on the minimum wage among their members. Finally, in the occupied Arab territories, the Palestinian General Federation of Trade Unions (PGFTU) indicates that, through a media campaign on the minimum wage, it is trying to establish direct contact with workers, in particular by distributing leaflets and organizing

²³⁷ (2) ss 199 and 204. The labour inspector receiving the claim orders the reestablishment of the employee's rights and the payment of the amounts due. Failure to pay results in direct action before the competent court.

²³⁸ (2) s. 150(2).

²³⁹ (2) s. 513.

²⁴⁰ (1) s. 251.1.

²⁴¹ (1) s. 69. A labour inspector who records a violation may issue an order compelling the employer to abide by the legal requirements and, especially, to pay the minimum wage applicable for the employees in question. A copy of this order is sent to all underpaid workers or, where appropriate, to the workers' representative. The employer must also display a copy of it in all workplaces in which the workers involved are employed.

²⁴² (1) ss 123, and 124(1) and (3). Any worker may lodge a complaint with the labour inspectorate concerning the non-payment of a sum due in the context of employment relations. The inspectorate then conducts an investigation and can order the employer to pay the amounts owed to the worker within 15 days. Legislation on homeworkers contains similar proceedings: (4) s. 34.

demonstrations and petitions, with the aim of raising awareness on issues related to the minimum wage and the protection of workers.

316. Employers' and workers' organizations may also collaborate in the enforcement of minimum wage provisions. In Mozambique,²⁴³ the legislation provides that employers and workers shall collaborate with the labour inspectorate in the enforcement of labour legislation. In the Philippines,²⁴⁴ labour inspectors are always accompanied during inspections by union representatives or, in their absence, by a worker representing the workers' interests. These representatives have the right to submit their own findings to the inspectors visiting their enterprise. The legislation in certain countries also provides for the possibility for trade unions to initiate proceedings on behalf of workers whose minimum wage rights have not been respected. In India,²⁴⁵ claims for the recovery of wages due may be made by the worker, the Worker representative, a representative organization of registered workers authorized in writing to act on behalf of the worker, or the labour inspector. In Israel,²⁴⁶ a claim for payment of a minimum wage may be filed with the labour court by the employee, the representative organization of employees at the place of employment or, where there is no such organization, by the organization of which the worker is a member.

317. In certain countries, trade unions even carry out the functions of the labour inspection services. In Belarus,²⁴⁷ supervision of the application of labour legislation is carried out by labour inspectors, and also by trade unions, which are authorized to request any relevant documents from the employer in the context of such supervision. In Bulgaria,²⁴⁸ trade unions are authorized to visit workplaces at any time, request and obtain information, and the production of documents. They perform the supervisory and early warning duties of labour inspectorates. In China,²⁴⁹ trade unions are empowered to carry out supervision in enterprises and may refer any violation to the competent authorities for investigation. In the Russian Federation,²⁵⁰ trade unions also perform the functions of supervising the enforcement of labour legislation and, in this capacity, can appoint trade union inspectors. In Slovakia,²⁵¹ Worker representatives perform the functions of monitoring compliance with labour legislation and the obligations arising out of collective agreements, and in this capacity are granted some of the powers of labour inspectors. According to the information provided by the Governments of Indonesia and Poland, workers' organizations in these countries also participate in supervising the application of minimum wages.

²⁴³ (2) s. 139(d).

²⁴⁴ (4) s. 9; (5) s. 18.

²⁴⁵ (1) s. 20(1), (2) and (5).

²⁴⁶ (1) ss 7 and 18A. In Trinidad and Tobago, the representative workers organizations – just like the worker concerned – may submit a complaint to the employer, and in case of inaction, file a complaint with the competent minister: (1) s. 22B.

²⁴⁷ (2) ss 462–463.

²⁴⁸ (2) s. 406.

²⁴⁹ (2) s. 4.

²⁵⁰ (2) s. 370.

²⁵¹ (2) s. 239.

318. Employers' organizations also have an important role to play in this field, in addition to providing their members with information, as indicated above. In Finland,²⁵² for example, the legislation establishes that employers' organizations and employers bound by a collective agreement shall respect its provisions, and the employers' organizations shall monitor the enforcement of the agreement by its members, under the penalty of a fine. In Pakistan,²⁵³ under the 2010 labour policy, it is planned to set up tripartite monitoring committees at the district, provincial and federal levels to monitor implementation of labour laws.

319. In Canada (Quebec),²⁵⁴ the functions of monitoring compliance with labour legislation are performed by the Labour Standards Commission, the members of which represent various groups of the population, including non-unionized workers, employers from large enterprises, employers from small and medium-sized enterprises, and employers from cooperatives. The members of the Commission, with the exception of the President have to comprise those from workers' and employers' circles in equal numbers. In *Australia*,²⁵⁵ in the case of non-compliance with minimum wages fixed by a modern award or a national minimum wage order, a claim may be made to the competent court by an employee, employer, workers' organization, employers' organization or labour inspector, with a view to the imposition of a fine on a non-compliant employer.

Section 7. Protection of workers against victimization

320. Paragraph 14(f) of Recommendation No. 135 provides that the measures to ensure the effective application of minimum wage provisions should include adequate protection of workers against victimization. Many countries, including *Australia*,²⁵⁶ *Barbados*,²⁵⁷ *Canada*²⁵⁸ and *United States*,²⁵⁹ have anti-retaliation legislation to protect employees from being discharged or otherwise discriminated against for having filed a complaint or for having instituted proceedings against their employer. A few countries, such as *Gambia*,²⁶⁰ *Israel*,²⁶¹ *Japan*,²⁶² *Malta*²⁶³ and *Philippines*,²⁶⁴ have legislation that explicitly prohibits employers from taking measures to intimidate or penalize workers who exercise their right to the minimum wage by making a complaint or a claim for the recovery of unpaid amounts. This protection is, however, important in ensuring

²⁵² (2) ss 8–9.

²⁵³ *Labour Policy 2010*, para. 33.

²⁵⁴ (22) ss 4–5, 8 and 39.

²⁵⁵ (1) ss 45, 293 and 539.

²⁵⁶ (1) ss 340, 342.

²⁵⁷ (1) s. 30(1)(c)(iv).

²⁵⁸ (1) s. 256(c).

²⁵⁹ (1) s. 15(a)(3). See also US Department of Labor: *Fact Sheet No. 77A – Prohibiting retaliation under the Fair Labor Standards Act*.

²⁶⁰ (1) s. 11.

²⁶¹ (1) s. 7A.

²⁶² (3) ss 34 and 39.

²⁶³ (2) ss 28, 30 and 32.

²⁶⁴ (2) s. 118.

that workers have access to legal remedies if they are paid below the minimum wage rate. To strengthen the effectiveness of such provisions, they are accompanied by penalties for non-compliance in the legislation in certain countries. In Mauritius,²⁶⁵ any individual who endeavours to intimidate workers to stop them exercising their rights is guilty of an offence punishable by a fine or a prison sentence of a maximum of three months. In Seychelles,²⁶⁶ it is an offence punishable by a fine for an employer to victimize a worker who has initiated a recovery procedure.

Section 8. Other measures to facilitate compliance with minimum wages

321. The extent to which minimum wages are respected in practice can be influenced by the nature of the minimum wage system. For example, an excessively high minimum wage in light of the economic and social situation of the country concerned is at greater risk of non-compliance than if its amount is determined taking into account the various considerations set out in Convention No. 131. Similarly, the effective participation of the social partners in the decision-making process increases the probability of the application in practice of the minimum wages that are established, particularly where such decisions are taken on a bipartite or tripartite basis. Moreover, a simple minimum wage system facilitates awareness by employers and workers of the applicable rates, and therefore contributes to greater compliance.

322. Other measures which offer incentives can also have a real impact on compliance with minimum wages. These measures may include efforts to disseminate a culture of respect for minimum wage provisions among employers, for example by highlighting their role in the establishment of rules of the game that are the same for everyone.²⁶⁷ The strengthening of the capacities of the various actors concerned is also particularly useful. In Canada, the government of Quebec decided to make training central to its strategy to ensure compliance with workers' rights, including in relation to minimum wages, and the Quebec Industrial Relations Board organizes information meetings with employers, workers and other social groups, such as students and cultural communities.²⁶⁸ Moreover, according to the report of the Government of Canada, information campaigns to improve awareness of minimum wage rates and the relevant legislation have been conducted in Alberta and New Brunswick. In the United Kingdom, the Government launched an information campaign for the most vulnerable workers to familiarize them with their fundamental labour rights and the means available to protect those rights. The federal authorities in the United States²⁶⁹ also carry out various types of outreach activities.

²⁶⁵ (1) s. 100(3).

²⁶⁶ (3) s. 5(b). Similarly, in Trinidad and Tobago, the legislation prohibits the employer, on pain of fine, to take measures against a worker for the sole reason that he has filed a complaint alleging non-compliance with a minimum wages order: (1) s. 22C.

²⁶⁷ See C. Benassi: *The implementation of minimum wage: Challenges and creative solutions*, ILO, Global Labour University, Working Paper No. 12, March 2011, p. 11.

²⁶⁸ P.L. Gallina: *New compliance strategies: "Hard law" approach*, report prepared for the Federal Labour Standards Review, Human Resources Development Canada, October 2005, p. 34.

²⁶⁹ According to information provided by the Government, regional branches of the Wage and Hour Division conduct presentations in schools and colleges, distribute information and broadcast public service announcements in local media in English, Spanish and other relevant languages in the region. The Wage and Hour Division also collaborates with foreign embassies so that they can disseminate information among their nationals working in the United States.

According to information provided by their respective governments, campaigns of this kind are conducted in China, Mauritius,²⁷⁰ Pakistan,²⁷¹ Peru²⁷² and Philippines.²⁷³

323. Moreover, in the Philippines, the Department of Labor and Employment has introduced a programme to promote voluntary compliance with labour legislation. Enterprises signing up to this programme are inspected by a tripartite certification committee and, where appropriate, are awarded a tripartite certificate of compliance with labour laws. Furthermore, the Government has introduced a collaborative programme (the Kapatiran WISE–TAV Program) through which large enterprises that are in compliance with labour legislation can choose to share their resources and expertise with micro- and small enterprises to help them improve working conditions.²⁷⁴

324. Finally, the Committee draws attention to an innovative solution implemented in India following the adoption of the Mahatma Ghandi National Rural Employment Guarantee Act (MGNREGA), which has had a real impact on compliance with minimum wages, including in the informal economy.²⁷⁵ Through this programme, the Government plays the role of “employer of last resort” by undertaking to employ itself all the excess non-skilled labour force and to provide remuneration at the minimum rate in force. It seeks to provide annually a guarantee of up to 100 days of employment per household in rural areas. After registering and receiving a job card, a rural household can demand work at any time and will be provided with employment within 15 days of the demand, or otherwise compensated with a daily

²⁷⁰ Information campaigns are organized for employer and worker representatives.

²⁷¹ Activities include the organization of seminars, information campaigns and the distribution of leaflets.

²⁷² Training sessions are organized for the Regional Directorates of Labour and Employment Promotion so that they can play their role more effectively in promoting the right to the minimum wage. In addition, information brochures on the minimum wage are distributed to the general public.

²⁷³ Regional tripartite wages and productivity boards are required to organize information sessions for the public when new minimum wages orders are adopted.

²⁷⁴ Reference may also be made, in this connection, to the Better Work Programme, launched in 2007 to improve compliance with labour standards in the garment sector by proposing solutions to the multinationals present in that sector, while also helping suppliers to retain access to international markets. At the institutional level, the Programme has its origins in a partnership between the International Labour Organization and the International Finance Corporation (World Bank Group). At the national level, the Programme combines independent assessments of enterprises with advisory and training services. The Better Work Programme works with the tripartite partners at the national level and with international buyers. The Programme offers assessment, advisory and training services. It is currently present in six countries: Haiti, Indonesia, Jordan, Lesotho, Viet Nam and, since 2011, *Nicaragua*. Annual assessments of enterprises in these countries focus on compliance with labour standards in areas covered by the fundamental Conventions, as well as on working conditions, including remuneration. The latest synthesis report, for the period 2009–12, shows that in the countries covered, the rate of non-compliance with the minimum wage was between 10 and 19 per cent, with the exception of Haiti, where the rate was 84 per cent, due to difficulties in determining the remuneration of workers whose wages are calculated on piece-work basis; see ILO and International Finance Corporation, *Better Work: Better Work: Stage II global compliance synthesis report 2009–12* (Geneva, ILO, 2013). Available at: <http://betterwork.org/global/?p=2983>.

²⁷⁵ The programme was introduced in 200 districts in 2005–06 and extended to the entire country in 2009–10. For more information, see N. Burra: *Transparency and accountability in employment programmes: The case of NREGA in Andhra Pradesh* (2008). Unpublished document, available at: http://www.levyinstitute.org/pubs/EFFE/Transparency_and_accountability_in_employment_programme_Final_version.pdf; S. Lakha: *Accountability from below: The experience of MGNREGA in Rajasthan (India)*, Asia Research Institute, Working Paper Series No. 171, National University of Singapore, 2011; Labour Bureau: *Report of the workings of the Minimum Wage Act 1948*, New Delhi, Government of India, 2005, available at: <http://labourbureau.nic.in/reports.htm>; U. Rani, P. Belser and S. Ranjbar: “Role of minimum wages in rebalancing the economy”, in *World of Work Report 2013*, Geneva, ILO; U. Rani and P. Belser: “The effectiveness of minimum wages in developing countries: The case of India”, in *International Journal of Labour Research*, Vol. 4(1), 2012.

unemployment allowance. The employment will be provided within a 5-kilometre radius of the village where the applicant resides. In certain states, wages under the MGNREGA are linked to statutory minimum wages for agricultural labourers, and in others to the national minimum wage floor. The principle of equality of remuneration between men and women is set out in the guidelines for the implementation of the MGNREGA. The Act also emphasizes the right to information and social audits, which provides an opportunity for civil society and NGOs to ensure proper implementation. This initiative has helped not only in the provision of minimum wages to workers, but also by improving the compliance rate in India. Minimum wage compliance increased from 44 per cent in 2004–05 to 64.6 per cent in 2009–10. A larger proportion of women workers benefit from minimum wages and the strategy adopted by the Government has had a considerable effect on the redistribution of resources to low-paid workers.

Conclusion

325. *The Committee considers that effective enforcement of minimum wage provisions should include a range of measures making the provisions binding and establishing penalties for non-compliance as well as other appropriate measures.* The provision of adequate information to employers and workers plays a crucial role in this respect, and appropriate efforts have to be made in this regard by Governments, as well as employers' organizations and workers' organizations.²⁷⁶ With regard to the prohibition of the abatement of minimum wages, as provided for in Article 2 of Convention No. 131, the Committee notes that the national legislation in certain countries provides for possible exceptions from the requirement to pay minimum wages for certain categories of workers, including those with disabilities. Measures to facilitate the employment of such workers are welcomed. It would, however, be desirable to avoid any discriminatory effects. Moreover, the possibility for individual exceptions may sometimes be introduced for enterprises experiencing financial difficulties as it is true that, in certain exceptional cases, such a measure adopted on a strictly temporary basis in consultation with the employers' and workers' organizations concerned, and under close supervision by the public authorities, could contribute to avoiding redundancies for economic reasons, or even the closure of the enterprise. *The Committee recalls that the Convention does not envisage any exceptions to the principle of the binding nature of minimum wages. In so far as possible, alternative measures should be sought, such as the reduction of social contributions or the provision of similar facilities by the public authorities, to help enterprises overcome such difficulties without infringing the provisions of the Convention.*

326. With regard to labour inspection services, it is certain that effective supervision of the application of labour legislation requires a sufficient number of inspectors provided with the appropriate material resources and powers. This requirement is naturally a significant burden on the state budget which many developing countries, in particular, struggle to assume. In addition to financial reasons, the scope of action of labour

²⁷⁶ A study conducted in the *United Republic of Tanzania* has established a correlation between, on the one hand, knowledge by workers of their rights relating to working hours, the minimum wage and maternity protection, and, on the other hand, compliance with these rights. See S. Lee and D. McCann: "The impact of labour regulations: Measuring the effectiveness of legal norms in a developing country", in S. Lee and D. McCann (eds): *Regulating for decent work: New directions in labour market regulation* (ILO and Palgrave Macmillan, 2011), pp. 304–306.

inspection services is also restricted by the scale of the informal economy, which may represent up to 90 per cent of the national economy, as is the case in India.

327. The Committee also wishes to emphasize the importance of sanctions in ensuring compliance with minimum wages. As the Committee indicated above, these sanctions do not necessarily have to be of a penal nature, as the Convention leaves States free to determine which penalties are appropriate at the national level, provided that they are effective and dissuasive. The sanctions established by national legislation should be an important element in the efforts made to convince employers to comply with current minimum wage rates and thereby maintain the conditions for fair competition between them. Another essential element of the range of measures to be taken is to ensure accessible and effective legal remedies for employees whose minimum wage rights have not been respected, so that they can recover unpaid amounts owed to them. In the absence of such measures, regardless of the administrative or penal sanctions applied to offenders, the situation resulting from non-compliance would not be rectified, as the wages would remain unpaid. Finally, the effective use of these remedies by the workers concerned can only be ensured if they are protected against the risk of victimization to which they may be exposed for initiating proceedings against their employer; this risk is particularly acute in periods of economic crisis, which are marked by high levels of unemployment.

Chapter VIII

Minimum wages, economic crisis and austerity measures

328. States which are confronted with a situation of economic crisis or have to adopt austerity measures to reduce the public deficit often implement measures to provide a social protection safety net for the most vulnerable groups. The question of the role that is played by minimum wage policies in this context is of crucial importance in view of their close links with broader economic and social policy. For example, it may be considered that, in general terms, the responses to the Asian financial crisis at the end of the 1990s were not related to the minimum wage,¹ but more to measures to protect wages and, more broadly, social protection.² However, that crisis contributed to progressively increased awareness of the importance of minimum wages as an instrument of social protection and cohesion and, in the medium term, to the strengthening of minimum wage systems in the region.

329. At the international level, as the Committee indicated in the introduction to the General Survey, following a certain lack of interest, which lasted for around 20 years, there was a resurgence of attention in the early 2000s on the idea of establishing minimum wage fixing systems. However, it was noted that the growth in real wages has been lower than that of productivity gains since the early 1980s.³ Although there are multiple causes for the economic and employment crisis that has affected many countries throughout the world since the end of 2008, it cannot be claimed that, in general terms, excessive wage levels were a contributory factor. In view of the international nature of the crisis, a generalized reduction in wages aimed at maintaining enterprise competitiveness is likely to have negative impacts on global demand, and on the contrary it would appear to be preferable to maintain the

¹ However, in Thailand, a reform of the minimum wage system in 1998 led to a decentralization of the process of fixing minimum wages in order to take into account differences in the cost of living between provinces. Nevertheless, the minimum wages established by the provincial authorities could not be lower than the basic minimum wage set at the national level. See D. Campbell: “Social dialogue and labor market adjustment in East Asia after the crisis”, in G. Betcherman and R. Islam (eds): *East Asian labor markets and the economic crisis: Impacts, responses and lessons*, World Bank/ILO, Washington, DC/Geneva, 2001, pp. 443–445.

² In Thailand, severance benefits were improved, a public fund was established to ensure that employees of insolvent enterprises received those benefits and a Social Investment Fund was created with the assistance of the World Bank with a view, among other aims, to improving the access of persons of low incomes to basic economic and social infrastructure and to employment. In the *Republic of Korea*, the Government relaxed the conditions for access to the programme of unemployment assistance and extended the period for which benefits were provided. Moreover, an institution was created to guarantee wages in the event of the insolvency of the employer.

³ ILO: *Global Wage Report 2012–13: Wages and equitable growth*, Geneva, p. 43, figure 31.

purchasing power of wage earners.⁴ The case of *Brazil* is striking in this regard. Following the debt crisis in 1982, the Government decided to allow the real value of the minimum wage to drop significantly to reduce the public deficit in view of the link between the minimum wage and social security benefits, and due to the fear of the impact of an increase in the minimum wage on unemployment. The minimum wage fell to its lowest level in 1995 and was then subject to moderate increases. In 2006, the Government, in cooperation with the social partners, decided to schedule the readjustment of the minimum wage at specific dates between 2007 and 2011, based on an adjustment formula. When the international economic and financial crisis struck, the Government chose the opposite option to the response adopted in the 1982 crisis. The scheduled minimum wage increases were maintained in February 2009 and January 2010. These counter-cyclical measures, which also included the improvement of unemployment benefits and of the *Bolsa Familia* system of conditional cash transfers, supported private consumption and facilitated *Brazil's* emergence from the crisis, while making a major contribution to the reduction of poverty and inequality.⁵

330. As early as 1931, Albert Thomas, the first Director-General of the ILO, speaking at the International Labour Conference, expressed serious doubts about the validity of responses to the Great Depression based on low wages.⁶ That is also the approach followed by the Global Jobs Pact, adopted unanimously by the International Labour Conference in June 2009, which proposes a series of measures to mitigate the impact of the international financial and economic crisis on society and employment. The Global Jobs Pact proposes that “Governments should consider options such as minimum wages that can reduce poverty and inequity, increase demand and contribute to economic stability” (paragraph 23) and calls for the regular adjustment of minimum wages to avoid deflationary wage spirals (paragraph 12). It also affirms the relevance of the ILO standards on wages “to prevent a downward spiral in labour conditions and build the recovery” (paragraph 14), with explicit reference being made to Convention No. 131.⁷ The importance of the Global Jobs Pact was reaffirmed in the Statement of the Officers of the Governing Body on the global economic crisis, adopted in November 2012.

⁴ See ILO: *World of Work Report 2013: Repairing the economic and social fabric*, Geneva, 2013, p. 47; ILO: *Global Wage Report 2010–11: Wage policies in times of crisis*, Geneva, 2010, pp. 69–81; ILO and International Institute for Labour Studies (IILS): *The financial and economic crisis: A decent work response*, Geneva, 2009, pp. 58–59; P. Belser and S. Lee: “Wages and economic crisis: Towards a new perspective on wages, productivity and economic growth”, in ILO: *The global crisis: Causes, responses and challenges*, Geneva, 2011, pp. 151–165.

⁵ The real value of the minimum wage rose by 83 per cent between 1996 and 2009. The real increase in the minimum wage was 6 per cent in February 2009 and 5.7 per cent in January 2010, while job creation in the country recovered as of February 2009. See ILO and IILS: *Brazil: An innovative income-led strategy: Studies on growth with equity*, Geneva, 2011; J. Berg: “Brasil: El salario mínimo como respuesta a la crisis”, in *Notas sobre la crisis*, ILO Regional Office for Latin America and the Caribbean, Lima, 2009.

⁶ A. Thomas: *International Social Policy*, ILO, Geneva, 1947, p. 91.

⁷ The United Nations Economic and Social Council (ECOSOC) in July 2011 adopted a resolution requesting the United Nations funds, programmes and the specialized agencies to take the Global Jobs Pact into account in their policies and programmes. See ECOSOC: *Recovering from the world financial and economic crisis: A Global Jobs Pact*, Resolution 2011/37 of 11 July 2011, paragraph 7. See also ILO: *Tackling the global jobs crisis: Recovery through decent work policies*, Report I(A), Report of the Director-General, ILC, 98th Session, 2009, para. 116.

331. At the request of the G20, the ILO prepared an inventory in 2009 and an initial assessment of the employment and social protection measures taken in 54 countries in all regions and income categories in response to the global economic crisis.⁸ In 2010, the ILO and the World Bank decided to combine efforts and conduct a joint investigation into responses to the crisis, based on the structure of the Global Jobs Pact, and including minimum wages. Twenty-three countries were added to those studied in the first inventory of 2009, with a total of 77 countries being examined, from every region in the world and with different levels of development, representing in total 89 per cent of global GDP and 86 per cent of the world's active population. This resulted in a database and a joint publication.⁹ The survey showed that, of the 77 countries examined, 33 indicated that the minimum wage rate had been adjusted during the period between mid-2008 and the end of 2010. Of these, 16 countries raised the minimum wage in real terms, ten increased it at approximately the same rate as the CPI, six raised it by a lower rate than the CPI, and only one country temporarily reduced it, which shows that the minimum wage policy was indeed an important element of countries' responses to the crisis.¹⁰

332. In its report submitted to the June 2010 session of the International Labour Conference, the Committee emphasized the relevance of the ILO's wages-related standards in the context of the global economic crisis, welcoming the adoption of the Global Jobs Pact and emphasizing the crucial importance of the enforcement of minimum wages in periods of crisis.¹¹ In a general observation, it also called on governments to transmit with their regular reports detailed information on any wage policy measures taken or planned in connection with the current economic crisis, including with reference to the adjustment of minimum wage rates.¹²

333. Several governments replied to the Committee's general observation, and some of them reported measures specifically related to the fixing of minimum wages in the context of the crises response. The Government of *Australia* indicated that the discussions of the Australian Fair Pay Commission in 2009 and Fair Work Australia in 2010 did not focus on responses to the crisis, although they were required to take the context into consideration. In 2009, the federal minimum wage and pay scale had remained unchanged in relation to those of 2008 because of the increased risk of unemployment. Although the Fair Pay Commission had recognized that consumer prices were continuing to rise, it also noted that fiscal reform had led to an increase in disposable income for most households, which had enabled the safety net to be maintained. In 2010, the federal minimum wage was increased, taking into account the performance of the national economy, which had been better than expected, the need to provide a safety net through the minimum wage and the economic forecasts which were favourable for a wage increase. The Government of *Austria* indicated that, among the measures taken to help the country emerge from the crisis, there had been no reduction

⁸ ILO: *Protecting people, promoting jobs: A survey of country employment and social protection policy responses to the global economic crisis*, ILO report to the G20 Leaders' Summit, Pittsburgh, 24–25 Sep. 2009, Geneva, September 2009.

⁹ ILO and World Bank: *Joint synthesis report: Inventory of policy responses to the financial and economic crisis*, ILO, Geneva and World Bank, Washington, DC, 2013. The database can be accessed at the following address: www.ilo.org/crisis-inventory. See also F. Bonnet, C. Saget and A. Weber: *Social protection and minimum wages responses to the 2008 financial and economic crisis: Findings from the ILO/World Bank Inventory*, Employment Sector, Employment Working Paper No. 113, ILO, Geneva, 2012.

¹⁰ *ibid.*, p. 35.

¹¹ Report III (Part1A), ILC, 99th Session, 2010, paras 105–119.

¹² *ibid.*, p. 601.

in minimum wages guaranteed by collective agreement. In 2009, the level of wages determined by collective agreement had been on average 3.4 per cent higher than in 2008. The Government of *Azerbaijan* reported that in 2010 a general collective agreement had been concluded between the Government and the social partners for the period 2010–11. The priority goals set included minimizing the damaging effects of the economic crisis, and the parties had decided to adopt measures to promote a rise in incomes and standards of living, including the progressive alignment of the minimum wage and the subsistence minimum with the requirements of Convention No. 131, the European Social Charter and the law on the subsistence minimum.

334. In Canada, the federal authorities reactivated the work-sharing programme and adopted fiscal measures for persons already in the workforce or entering it. According to the information provided by the Government, the Manitoba authorities also reduced business taxes in addition to increasing minimum wages, and raised the personal income tax exemption level to assist low-income workers. The minimum wage amount has been increased in Alberta, New Brunswick, Nova Scotia, Ontario, Quebec, Newfoundland and Labrador. The Government of Israel reported that the minimum wage level is adjusted annually to stay at 47.5 per cent of the average wage, a ratio that remained unchanged during the economic crisis. In *Japan*, the revision of minimum wage rates in 2009 resulted in the average national minimum wage being increased by ¥10, despite the crisis, with the objective of ensuring that the minimum wage was not lower than the level of public assistance. Moreover, this increase followed the tripartite agreement of June 2008 on improving the productivity of small and medium-sized enterprises and raising the minimum wage over the medium and long term. In addition, during the 2010 Employment Strategy Dialogue, consisting of tripartite participants and experts, it was agreed that a national average minimum wage of ¥800 should be ensured as early as possible, while maintaining the aim of ¥1,000. However, implementation of the measures to achieve this aim was based on the promise of nominal GDP growth of 3 per cent and real growth of 2 per cent. The Government explained in the report submitted for the General Survey that, with this in view, it was providing financial support to the small and medium-sized enterprises most likely to be affected by the increase of the minimum wage.

335. In the reports they submitted for the General Survey, a number of governments also provided information on the measures taken in the field of minimum wages as part of the response to the economic crisis. A number of them attributed a positive role to minimum wages in times of crisis. The Government of the Islamic Republic of Iran indicated in general that, although minimum wages are usually determined on the basis of criteria such as the inflation rate and the need to ensure minimum subsistence for a family, when there is an economic crisis, they have to be determined so as to guarantee the subsistence of workers. According to information received from the Government of Bulgaria, in view of the low level of wages in the country and the current context of economic crisis, the minimum wage was increased by 29.2 per cent between 2009 and 2013, with a view to strengthening the protection of workers against the risk of poverty. The Government of China indicates that it is committed to promoting decent work by instructing local authorities to ensure the constant increase of minimum wages, with the goal of achieving 40 per cent of the average wage of urban workers by 2015. According to the Government of Gabon, the SMIG was raised and the minimum wages determined in collective agreements were negotiated before the global economic crisis. However, a monthly minimum income was instituted by decree in 2010 for all workers with wages under 150,000 CFA francs, with the SMIG being set at 80,000 CFA francs. In Mauritania, wages were increased by between 10 and 30 per cent in 2013, and a

significant tax allowance contributed to increasing the purchasing power of wage earners. The Government of Seychelles also refers to an increase in the minimum wage in 2013 among the measures to strengthen the protection of workers in the current context of economic crisis.

336. The Government of Singapore indicates that the “Workforce Income Supplement” (WIS) was increased in the budget for 2013. As a result, about 480,000 nationals earning a maximum of 1,900 Singapore dollars (SGD) a month, or around 30 per cent of the national workforce, will receive the WIS, the amount of which will be increased by between 25 and 50 per cent. The Government added that among the measures adopted, in the context of the Wage Credit Scheme, it would co-finance 40 per cent of the wage increases of all national workers for the next three years up to a salary of SGD4,000, in the belief that this co-financing will help employers to share productivity gains with their employees. The Government of Hungary reports that the minimum wage and the guaranteed minimum salary were increased in 2011–12 in order to offset the increased tax burden on low wage earners without children. Measures were also taken to ensure that the rise in the minimum wage does not have a negative impact on employment, including tax relief, applied on a degressive scale in 2013, for employers paying salaries above the minimum wage. In addition, in enterprises where the majority of workers are paid the minimum wage rate, the Government decided to offset the cost of the increase in the minimum wage for the first half of 2013 through financial aid. Finally, the Government indicates that, with the implementation of the agreement concluded in the tripartite VKF Forum (the Government and private sector Permanent Consultative Forum), under which the increase in the minimum wage for 2013 has to be higher than the projected rate of inflation, the real value of the minimum wage will finally begin to rise after a long period of decline since 2007.

337. According to the report of the Government of *Latvia*, the minimum wage was increased in 2010, while tax measures were adopted, including some for low wage earners (increase in non-taxable minimum and tax relief for dependants, and a decrease in income tax rates). In *the former Yugoslav Republic of Macedonia*, the law of 2012 on the minimum wage was adopted in cooperation with the social partners in the context of the economic crisis. However, the law provides for a period of adaptation until the end of 2014 for the sectors with the lowest wages, taking into account their situation and wage trends in these sectors. In *Uzbekistan*, the Government adopted a special programme of anti-crisis measures for the period 2009–12. In order to guarantee a constant rise in incomes and the standard of living, the minimum wage was increased twice in 2012. The Government of *Poland* reports that a series of anti-crisis measures were adopted in 2009, when the impact of the economic slowdown began to be felt. One of the measures was intended to develop machinery to ensure that the amount of the minimum wage reached 50 per cent of the average wage.¹³ However, the social partners have not yet reached an agreement on how this goal is to be achieved.

338. The Government of *Romania* indicates that, following consultations with the social partners, it intends in future to ensure the correlation of the rise in the minimum wage with a decrease in employers’ contributions so as to support employment and enterprise competitiveness. According to the report of the Government of *Thailand*, following a government decision of January 2013, the Minister of Labour will be required to take the necessary measures to reduce the impact of the rise in the minimum wage and to strengthen the competitiveness of small and medium-sized enterprises, including measures to reduce costs through the tax system and to increase labour productivity. The

¹³ The Independent and Self-Governing Trade Union “Solidarnosc” (NSZZ) indicates that it submitted a bill for this purpose.

Governments of Algeria, *Antigua and Barbuda*, Bangladesh and *Sri Lanka* report that no wage reduction measures are envisaged in the context of the crisis.

339. Some governments report other measures to maintain the purchasing power of the population. The Government of Benin indicates that, with a view to strengthening the protection of workers in the context of the current economic and employment crises, it has taken measures to subsidize certain products, especially basic necessities, while the Government of *Cameroon* refers to the adoption of a policy to combat the high cost of living. Finally, the Government of the *Central African Republic* indicates that standing tripartite consultation machinery has been active for several months to attempt to develop a new partnership framework that will be required to take into account the high cost of living and the low level of the minimum wages in the country in the context of the economic and employment crises.

340. In other countries, the economic crisis has somewhat restricted the rise in minimum wages. The Government of *Albania* indicates that, following the concerns expressed by employers in the clothing and shoe sectors regarding their financial difficulties resulting from an increase in the minimum wage in the middle of the economic crisis, it was decided to proceed cautiously when raising the minimum wage. Information provided by the Government of Belgium, indicates that the public authorities are endeavouring to control wage costs in a number of ways in order to maintain the competitiveness of the Belgian economy. These measures include reductions in the tax burden and social security contributions wherever possible. The Government also refers to the implementation of a 1996 law providing for the determination of a wage standard setting a ceiling for wage rises, taking into account the expected fluctuations in the wage costs of Belgium's main trading partners. According to the Government of Denmark, the social partners agreed on modest wage increases in light of the crisis. The Government of *Lithuania* reports that, in light of the economic and financial problems, the minimum wage was not increased between 2009 and 2011. However, in view of the economic recovery, the recommendations made by the social partners in the tripartite council and by organizations representing SMEs and other trade unions not represented in the council, as well as the financial prospects and economic situation of the country, the Government decided to raise the monthly minimum wage with effect from August 2012. It was increased again in 2013, with the objective of achieving a minimum wage corresponding to 50 per cent of the average wage.

341. In *Spain*,¹⁴ the rate of the interoccupational minimum wage (SMI) was frozen in 2012 so as not to be a burden on the state budget and with a view to encouraging economic recovery and job creation, while a national collective agreement, concluded in 2012 between the social partners, provided for wage moderation in collective bargaining. According to the information provided by the Government of Luxembourg, with a view to taking the difficult economic situation into consideration, the number of index-linked wage rises is currently limited to a maximum increase once a year. The Government of Panama indicated that, in the context of the economic crisis, measures have been taken to postpone the adjustment of minimum wages. According to the Government of the

¹⁴ See *Spain* – CEACR, Convention No. 131, observation, 2012. The Committee on Economic, Social and Cultural Rights expressed concern at the freezing since 2011 of the interoccupational minimum wage at a level that does not allow for a decent standard of living. See E/C.12/ESP/CO/5, June 2012, para. 18. Moreover, the General Union of Workers (UGT) and the Trade Union Confederation of Workers' Commissions (CC.OO.) consider that the economic crisis cannot be used as an excuse for setting aside the objective of achieving a minimum wage rate corresponding to 60 per cent of the average wage, which is the percentage considered equitable in the context of the implementation of the European Social Charter. The two confederations therefore call for the adoption of measures to make up for the loss of purchasing power of the SMI, as well as a legislative reform to establish a new basis for the annual adjustment of the rate of the SMI.

United Kingdom, in 2012 the Low Pay Commission recommended freezing the wage rates applicable to young workers in view of the deterioration in the labour market situation for these workers. The Government of Switzerland indicates in general terms that the flexibility offered by the wage fixing system has enabled the social partners to negotiate directly the appropriate measures to take into account the challenges and difficulties specific to each branch or sector in the context of the current economic and employment crises. At another level, the Government of Zimbabwe indicated that employers have been able to seek exemption from the payment of the minimum wage subject to compliance with the conditions laid down by the law.

342. The debt crisis has led some European countries to seek international financial assistance, which has been granted in exchange for the conclusion of memoranda of understanding determining the economic policy conditions accompanying the assistance. In the case of Ireland, these conditions included the reduction of the minimum wage, which was reduced from €8.65 to €7.65 an hour in 2010, or a fall of almost 12 per cent.¹⁵ Following the renegotiation of the Memorandum of Understanding, the minimum wage rate however rose to its previous level the following year. In exchange, the Government agreed to the temporary reduction of employers' social contributions.¹⁶ The Government of *Portugal* undertook only to raise the minimum wage if such increases were justified by changes in the economy and in the labour market, and only after the conclusion of an agreement for that purpose in the context of the review of the financial assistance programme.¹⁷ In accordance with the Memorandum of Understanding, the Government decided to raise the minimum wage rate to €485 for 2011, and not to €500 as had been agreed in a tripartite agreement concluded in 2006, and to freeze that rate for 2012.¹⁸

343. The most drastic measures were introduced in Greece. The first economic adjustment programme provided for the maintenance of the nominal value of the minimum wage at the same level for a period of three years and the introduction of subminima for groups at risk, such as the young and the long-term unemployed.¹⁹ In March 2012, the Government of Greece also undertook to reduce by 22 per cent the minimum wage which had been set by the national general collective agreement and then to freeze its amount until the end of the economic adjustment programme, and to reduce by an additional 10 per cent the minimum wage for young persons under 25 years

¹⁵ Ireland Memorandum of Understanding on Specific Economic Policy Conditionality, 8 Dec. 2010, in European Commission: *The economic adjustment programme for Ireland*, European Economy Occasional Papers No. 76, Feb. 2011, p. 63.

¹⁶ European Commission: *The economic adjustment programme for Ireland: Summer 2011 review*, European Economy Occasional Papers No. 84, Sep. 2011, p. 14. See also Ireland – CEACR, Convention No. 26, direct request, 2013.

¹⁷ European Commission: *The economic adjustment programme for Portugal: Seventh review: Winter 2012/2013*, European Economy Occasional Papers No. 153, June 2013, Annex 5: "Memorandum of Understanding on Specific Economic Policy Conditionality: Seventh Update: May 2013", point 4.4.

¹⁸ In this connection, the General Workers' Union (UGT) expresses concern at the excessively low level of the minimum wage and considers that an increase in wages, and particularly in the minimum wage, would have a positive impact on household consumption, which is essential for a recovery in growth. The General Confederation of Portuguese Workers – National Trade Unions (CGTP-IN) considers that the austerity measures adopted by the Government, including the restricted possibilities for the extension of collective agreements and the alignment of wage agreements with productivity trends, are an infringement of the right to collective bargaining.

¹⁹ European Commission: *The economic adjustment programme for Greece*, European Economy Occasional Papers No. 61, May 2010, p. 68.

of age.²⁰ In December 2012, the Government made a commitment to establish a new minimum wage mechanism. The minimum wage will no longer be fixed by means of collective bargaining, but by government decision to be made after consultation with the social partners and independent experts. Collective agreements can still set higher minimum wages, but they will be binding only for the signatories of these agreements.²¹

344. In its comments, the Committee has recalled that the fixing of fair minimum wages, in consultation with the social partners, constitutes a key element of the Decent Work Agenda and contributes to achieving the objectives of social justice and peace and the prevention of unfair competition, which the ILO has pursued since its creation. Moreover, the principle of full consultation and direct participation, on an equal footing, of the social partners in the operation of the minimum wage fixing machinery should be observed under all conditions, since the implementation of an economic adjustment programme or, in more general terms, an austerity policy in response to a crisis situation cannot release governments from their responsibilities in this field. On the contrary, this principle assumes particular importance in periods of economic and social crisis, owing to the significant repercussions that decisions relating to the fixing and periodic adjustment of minimum wages are likely to have on economic policy, including employment policy, and the purchasing power of workers. Open and constructive social dialogue facilitates the adoption of balanced measures to ensure a fair division of the efforts to be made to overcome the crisis, thereby promoting support for reforms and the maintenance of social cohesion.²² The Committee also draws attention to the ILO Declaration on Social Justice for a Fair Globalization, adopted in 2008, which recalls in its Preamble that the mandate of the Organization includes the responsibility to examine all international economic and financial policies in the light of the fundamental objective of social justice.

345. Other international organizations have expressed fears raised by the possible impact of the international economic crisis and the severe austerity measures implemented in some countries on the protection of social rights. In May 2012, the Chairperson of the United Nations Committee on Economic, Social and Cultural Rights sent an open letter to the States parties to the International Covenant on Economic, Social and Cultural Rights on the protection of the rights set out in the Covenant in the context of the economic and financial crisis. Noting the pressure on many States parties to embark on austerity programmes, sometimes severe, he emphasized that under the Covenant all States parties should avoid at all times taking decisions which might lead to the denial or infringement of economic, social and cultural rights.²³

²⁰ European Commission: *The second economic adjustment programme for Greece: March 2012*, European Economy Occasional Papers No. 94, Mar. 2012, p. 110. See also Greece – CEACR, Convention No. 95, observation, 2013. The European Committee of Social Rights considered that, following the reduction of 32 per cent imposed on the minimum wage for younger workers, that the wage had fallen below the poverty line and the relevant provisions therefore constituted a violation of the European Social Charter. See complaint No. 66/2011, *General Federation of the National Electric Power Corporation (GENOP-DEI) and the Confederation of Greek Civil Servants Trade Unions (ADEDY) v. Greece*, 23 May 2012.

²¹ European Commission: *The second economic adjustment programme for Greece: First review: December 2012*, European Economy Occasional Papers No. 123, Dec. 2012; European Commission: *Memorandum of economic and financial policies*, Annex II, p. 177. The details of the new minimum wage mechanism are set out in section 103 of the “Omnibus” Act, adopted by Parliament on 19 July 2013. It will come into force after the completion of the economic adjustment programme, that is on 1 January 2017 at the earliest.

²² See *Portugal* – CEACR, Convention No. 131, observation, 2013. See also *Spain* – CEACR, Convention No. 131, observation, 2013; Greece – CEACR, Convention No. 95, observation, 2013.

²³ Accessible at the following address: <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>. The Committee indicated that it realized that some adjustments in the implementation of some of the Covenant rights

346. In the context of the European Union, the European Parliament reaffirmed that, while the global economic crisis poses a severe threat to the fulfilment of economic, social and cultural rights, there is no justification for Member States, whatever their level of income, to compromise on their obligation to respect fundamental human rights. The European Parliament also stressed that governments have, at all times, an obligation to ensure “minimum essential levels” of the social and economic rights necessary for living in dignity. The European Parliament also reminded governments that youth employment policies should focus not only on job creation, but also on ensuring a level of income and working conditions that are appropriate for an adequate standard of living.²⁴ The European Commission itself emphasized in a communication outlining the measures designed to bring about a recovery that would generate employment, the need to guarantee decent and sustainable wages and to avoid low-wage traps in the context of the structural labour market reforms, stressing that setting minimum wages at appropriate levels can help prevent growing in-work poverty and is an important factor in ensuring decent job quality.²⁵ The Committee of Ministers of the Council of Europe underlined the particular relevance of social rights and their guarantee in times of economic difficulties, in particular for individuals belonging to vulnerable groups.²⁶ Finally, the European Committee of Social Rights considered that the economic crisis should not have, as a consequence, the reduction of the protection of the rights recognized by the European Social Charter and that governments are bound to take all necessary steps to ensure that these rights are effectively guaranteed at a period of time when beneficiaries need the protection most.²⁷

Conclusion

347. In the context of economic recession and austerity measures reviewed above, the Committee considers it important to recall Article 3 of Convention No. 131 which makes it clear that the elements to be considered when fixing minimum wage levels include the requirements of economic development and the desirability of maintaining employment as well as the needs of workers and their families. The international economic crisis that commenced towards the end of 2008 offered the International Labour Conference the occasion to indicate clearly the type of responses advocated by the ILO in such periods of economic difficulties and employment problems. The 2009 Global Jobs Pact calls for the preservation of the purchasing power of workers in times of crisis and considers minimum wage fixing and the regular adjustment of minimum wages to be a relevant instrument for achieving this objective. The inventory of the measures adopted by States in response to the crisis, drawn up jointly by the ILO and the World Bank, also demonstrates the important role played by minimum wage policy in many countries.

are at times inevitable but that States parties should not act in breach of their obligations under the Covenant. It also established a number of requirements that have to be met by any proposed policy change or adjustment.

²⁴ Resolution of 18 April 2013 on the impact of the financial and economic crisis on human rights, paras 5 and 32.

²⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Towards a job-rich recovery*, COM (2012) 173 final, 18 Apr. 2012, 2.1.1.

²⁶ Declaration on the 50th anniversary of the European Social Charter, adopted by the Committee of Ministers on 12 October 2011.

²⁷ General introduction to Conclusions XIX-2 (2009) on the application of the Charter in the context of the general economic crisis.

Several governments also emphasized in their reports the positive role played by minimum wages in the context of the crisis, while others adopted measures to combat the rising cost of living. However, in other countries increases in minimum wages were slowed down due to the crisis, and in yet others their rates were frozen. In the case of some European countries facing major economic difficulties, international financial assistance was conditioned on the implementation of economic policy measures focusing, among other areas, on minimum wages.

348. The Committee hopes that member States will take inspiration as much as possible from the Global Jobs Pact, which was adopted unanimously by the Conference, when drawing up their anti-crisis measures, both at the present time and on the occasion of future periods of economic difficulty. *The Committee recalls in this respect that the key principle of full consultation with and, where possible, the direct participation of the social partners on an equal footing in the process of minimum wage fixing, as set out in Convention No. 131 and Recommendation No. 135, should be respected in all circumstances, and even more so when, due to a situation of economic difficulty, it is desirable to seek balanced solutions that are acceptable to all parties.*

Chapter IX

Final observations

Section 1. Difficulties encountered in applying Convention No. 131 and Recommendation No. 135 and requests for technical assistance

1. Main obstacles to implementation

349. In the various chapters of the General Survey, the Committee has examined the different aspects of minimum wage fixing and highlighted a certain number of points on which difficulties are likely to arise in the application of Convention No. 131 and Recommendation No. 135. In the first place, this has involved the definition of the concept of wages and the identification of the elements of remuneration that are included in the minimum wage. This issue is of particular importance in relation to benefits in kind (housing, food, etc.), especially in the case of domestic workers. Restrictions on the scope of application of minimum wage systems may also constitute a stumbling block in the implementation of the instruments. The Committee has little information on the consultations held with the social partners prior to the exclusion of specific categories of workers from the application of the Convention. Moreover, relatively few governments provided information on this subject in their first reports on the application of the Convention, as they are required to do under the Convention. Additionally, while the Convention is intended to cover “all groups of wage earners whose terms of employment are such that coverage would be appropriate”, the exclusions made at the national level often apply to categories such as domestic workers, agricultural workers, young workers or other groups that may particularly benefit from protection in this area.

350. Although Convention No. 131 does not require the establishment of a national minimum wage, or minimum wages by sector or by region, certain difficulties may arise in the design of national minimum wage fixing machinery, such as compliance with the principle of equal remuneration for men and women – and accordingly the objective appraisal of jobs – when minimum wages differ by sector or occupational category. More generally, the implementation of the principle of equal remuneration for work of equal value may raise questions when minimum wages differ on the basis of age, disability or the migrant status of the workers concerned.

351. The full consultation of employers’ and workers’ organizations, not only on the determination of the scope of application of the minimum wage system, but more generally at all stages of the development and implementation of the system, is a fundamental requirement of Convention No. 131. Nevertheless, many employers’ and

workers' organizations have reported problems of compliance with this requirement. The choice of criteria for the fixing and adjustment of minimum wages is another point on which a certain number of employers' and workers' organizations indicate in their observations that the provisions of the Convention, which call for the joint consideration of the needs of workers and their families and of economic factors, are not always given effect. The frequency of minimum wage adjustments also gives rise to problems in certain cases, and the importance of this issue should not be underestimated in ensuring that minimum wage rates are adapted to the economic situation of the country. Finally, the implementation of Convention No. 131 and Recommendation No. 135 may encounter obstacles in relation to measures of application. In addition to restrictions on the binding nature of minimum wages, for example, in the context of provisions authorizing individual exemptions, problems may be encountered regarding the establishment of sanctions that are really dissuasive and the allocation of adequate resources for labour inspection services. All of the problems mentioned above are clearly likely to be exacerbated in a context of economic crisis, as emphasized by the Committee in the previous chapter.

2. Requests for technical assistance

352. A large number of governments, as well as employers' and workers' organizations, have requested technical assistance or advisory services from the Office, whether for the introduction or improvement of their minimum wage systems, the strengthening of the capacities of the actors involved in the implementation of this machinery, or an exchange of best practices in this area.

353. In Africa, the Government of *Cameroon* is planning to conduct a study on the adjustment of the SMIG with ILO technical support. The Government of Ethiopia has requested technical support to carry out a survey which could serve as a basis for fixing the minimum wage, and for the development of an information system on the national labour market. The Government of Gabon is seeking to strengthen the capacities of the members of its Labour Advisory Committee and the National Wage Review Board. The Government of Gambia refers to the need for technical support and awareness-raising activities on the implementation of the wage-fixing machinery. The Government of *Kenya* indicates that it has requested assistance from the ILO Regional Office for the development of a wages and incomes policy, and refers in particular to the need to review wage scales in line with job classifications, to carry out surveys on wage fixing and to address the issue of discrimination in minimum wages based on geographical location, within the framework of tripartite consultation. The Federation of Kenya Employers and the IOE also call on the ILO to provide assistance to the Government with a view to developing an effective income and wages policy. The Government of *Morocco* is seeking ILO assistance to develop avenues for reflection in the next rounds of social dialogue with a view to adopting effective minimum wage measures. In Uganda, the National Organization of Trade Unions (NOTU) also wishes to benefit from ILO advice and technical support.

354. The Government of Mauritius notes that technical cooperation needs, in the form of support for the National Remuneration Board, are outlined in the Decent Work Country Programme (DWCP) for 2012–14. The ILO could also provide technical expertise with a view to the introduction of a national minimum wage. The Government of Mauritania requests technical and financial support from the ILO to give effect to the instruments examined in the context of its poverty reduction strategy, especially with a view to organizing a tripartite workshop. The Government of Seychelles indicates that

ILO assistance would be useful to establish a clear minimum wage fixing mechanism with the involvement of all relevant stakeholders, and refers to the need for information campaigns for workers on their right to a minimum wage and its value. In the view of the Government of Togo, the ILO could provide technical support for the introduction of a system for determining the minimum wage based on reliable data, particularly by enhancing the capacities of the labour administration to conduct periodic surveys of the general level of wages in the country, the cost of living and its fluctuations. The Government of Zimbabwe notes the need for capacity building for collective bargaining and negotiating skills for the actors in minimum wage fixing machinery in the public and private sectors. It also wishes to receive support for labour inspection to improve the enforcement of minimum wages, especially in the informal economy. In more general terms, the Government of Mali would like to receive technical support for the implementation of its national labour policy.

355. In the Latin American and Caribbean region, the Government of Colombia wishes to receive ILO technical assistance in the form of support from specialists and to carry out technical studies. PSI also calls for ILO technical support in Colombia, particularly for an awareness-raising campaign, capacity building for trade unions on macroeconomic issues, and training for trade union leaders. PSI also calls on the ILO to provide advisory services for an examination of the indicators to be used for fixing wages. In their communications, the National Union of Public Servants of State Social Enterprises (SINALTRAESES), the National Association of Civil Servants and Employees in the Judicial Branch (ASONAL–JUDICIAL) and the Workers Union of the Tobacco Industry (SINTRAINTABACO) call on the Office to provide advisory services on how to ensure that all workers who need such protection, including those in precarious jobs or the informal economy, are covered by the minimum wage. These organizations also consider that the ILO should publish a regular report on minimum wage trends in the world and analyse the macroeconomic impact of minimum wages. In general terms, the ILO should provide technical assistance for the introduction of transparent, fair and effective minimum wage fixing machinery. In their joint comments, the IOE and the National Employers' Association of Colombia (ANDI) add that it would be very important to be able to count on ILO technical assistance. The Confederation of Workers of Colombia (CTC) is of the same opinion.

356. The Government of *Chile* emphasizes the need for ILO specialists to organize activities such as seminars, workshops and site visits to train public servants and the social partners, thereby improving the visibility of international labour standards. The Government of *Costa Rica* refers to the collaboration between the ILO and the National Wages Council with a view to simplifying the minimum wage structure and the machinery for fixing the amount of the wage floor (*salario minimo minimorum*). The Government of *Guatemala* wishes to receive technical assistance with a view to developing an overall wage policy that includes the annual adjustment of the minimum wage on the basis of the criteria set out in Convention No. 131, while also taking into account the specific characteristics of each region of the country. The Government of Honduras would also wish to receive technical and legal support from the Office for the development, definition, implementation and monitoring of a general wage policy, and the revision of the minimum wage fixing machinery. The Government of Panama wishes to benefit from ILO advisory services for the revision of the relevant legislation and the operational management of the National Minimum Wage Commission. The Government of Trinidad and Tobago wishes to receive ILO assistance for assessing the impact of the minimum wage on the economy and workers' well-being as well as in developing models for minimum wage determination adapted to the national context. Finally,

according to the Government of *Antigua and Barbuda*, an overall examination of the minimum wage provisions needs to be carried out to identify the issues on which Office support would be necessary. The Autonomous Workers' Confederation of Peru (CATP) would like ILO advisory services on the implementation of Convention No. 122, and its links with minimum wages.

357. In Asia, the Government of Indonesia requests capacity building for the tripartite constituents with a view to improving analysis of minimum wage data. The Government of the Philippines is seeking ILO technical assistance to identify the direct and indirect impact of minimum wage policies, and in particular of the two-tier wage system that has recently been introduced. The Office could also provide support for awareness-raising activities on the system. The Trade Union Congress of the Philippines (TUCP) would also like the ILO to assist the Government in rationalizing the minimum wage fixing machinery, while encouraging collective bargaining and the fixing of wages linked to productivity. The Government of *Sri Lanka* is seeking ILO support to simplify the structure of wage boards and extend their scope. The Government of Viet Nam wishes to continue to receive ILO support for the improvement of its legislation and national policies, particularly with a view to drafting a minimum wage law, in principle by 2015. Finally, the Government of Bangladesh indicates that its legislation is under review and that, upon completion of this process, it will be in a position to assess its needs in terms of technical cooperation.

358. Among the Arab States, the Government of Saudi Arabia reports that it has sought the advice of ILO specialists on a better way of fixing minimum wages in accordance with Convention No. 131 and Recommendation No. 135, taking into account the economic and social situation of the country and the nature of its labour market. The Government of *Iraq* requests the Office to organize a workshop to strengthen the capacities of the Tripartite Advisory Committee, of the committee responsible for fixing wages and labour inspection officials. The Government of Kuwait would like to receive technical advice on the most appropriate machinery for determining minimum wages, which would take into account both economic and social factors. With regard to Jordan, the General Federation of Jordanian Trade Unions (GFJTU) requests the ILO to carry out studies on the increase in the cost of living and on various economic indicators with a view to revising its minimum wages policy. In *Lebanon*, the National Federation of Trade Unions of Workers and Employers of Lebanon (FENASOL) wishes to receive ILO technical assistance with a view to proposing an overall wage and employment policy. With reference to the occupied Arab territories, the Palestinian General Federation of Trade Unions (PGFTU) requests technical advice from the Office on a number of points, including the application of international labour standards and the promotion of decent work.

359. In Europe, in the case of *Bosnia and Herzegovina*, the authorities of the Federation of Bosnia and Herzegovina indicate that, as the minimum wage is covered by a collective agreement, it would be useful to organize activities to strengthen collective bargaining. The authorities of the Republika Srpska are seeking support to strengthen employers' and workers' organizations, so as to establish a balance in social dialogue. With a view to the effective implementation of its minimum wage policy, the Government of Hungary would like the Office to carry out an analysis of the situation in the countries of Central and Eastern Europe. The Government of *Montenegro* indicates that it would be useful to establish a coordination office in the country, to promote closer cooperation between the national authorities and the ILO. In Turkey, the Confederation of Turkish Trade Unions (TÜRK-İŞ) considers that ILO assistance would be helpful in defining a method of calculation and identifying criteria for fixing the minimum wage.

360. Moreover, requests for assistance to give effect to the principle of equal remuneration for work of equal value, in accordance with the provisions of Convention No. 100, have been made by the Governments of *Costa Rica*, *Egypt*, Mauritius and *Sri Lanka*, while the Government of Saint Vincent and the Grenadines indicates that it will require such assistance in future. There have also been several requests for the provision of examples of best national practices for the various aspects of minimum wage fixing machinery. Such requests have been made, in particular, by the Governments of *Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina), *the former Yugoslav Republic of Macedonia*, Hungary, Indonesia, Kuwait and *Serbia*. The Hong Kong Confederation of Trade Unions (HKCTU) in China (Hong Kong Special Administrative Region) and TÜRK-İŞ in Turkey are also in favour of an exchange of best practices.

361. In general, the Government of the *Netherlands* considers that the ILO should pursue its efforts, in the context of technical cooperation, to ensure the implementation by ILO member States of the Conventions that they have ratified. The Government of Belgium recommends close cooperation between the ILO, the International Monetary Fund (IMF) and the “troika” (the European Commission, the European Central Bank and the World Bank) in countries where international recommendations on wage policy have been made. It also considers that the ILO should endeavour to strengthen the capacities of the social partners in social dialogue machinery covering wages in countries where this machinery is underdeveloped or non-existent. Finally, the Government of Poland expresses the view that the present survey, along with other ILO publications on minimum wages, will be extremely useful for national minimum wage fixing efforts. In Botswana, the Botswana Confederation of Commerce, Industry and Manpower (BOCCIM) considers that the preparation of the General Survey was necessary, among other reasons, to specify the criteria for adjusting minimum wages and the impact of such adjustments on employment. In Ireland, the Irish Congress of Trade Unions (ICTU) believes that the publication of the General Survey will provide essential information on best practice in relation to minimum wages and clarity on the implementation of Convention No. 131 and Recommendation No. 135.

362. Recalling the resolution concerning international cooperation in regard to minimum wage fixing – adopted by the International Labour Conference in 1969 at the first Conference discussion that eventually led to the adoption of Convention No. 131 – the Committee hopes that the Office will respond to the various requests that have been made for technical assistance, with a view to providing the tripartite constituents with all the necessary support to improve the protection of workers and, where appropriate, promote the subsequent ratification or improved implementation of the Convention. Such technical support could usefully be supplemented by other initiatives, such as the development of practical tools, including guides on the various types of indicators that can be used for minimum wage fixing, and easily accessible information, perhaps grouped by region, on national practices in relation to the institutional machinery for minimum wage fixing, and the choice between a single minimum wage and differing minimum wage rates by region or sector.

Section 2. Prospects for the ratification of Convention No. 131

363. As of 13 December 2013, 129 States had submitted a report under article 19 of the Constitution with a view to the preparation of the General Survey. Of those, 42 are already parties to Convention No. 131 and reported on their law and practices in light of Recommendation No. 135, while 43 other countries have ratified Convention No. 26 and/or Convention No. 99, and 44 countries have not ratified any of the ILO Conventions on minimum wage fixing. The Committee examines below the prospects for the ratification of Convention No. 131 as they emerge from the reports submitted by the 85 countries that are not yet parties to the Convention.

364. A certain number of governments¹ have not commented on this point, while several others report good prospects for the ratification of Convention No. 131. The ratification of the Convention by *Morocco*, as announced by the Government in its report, has since been registered. The Government of Viet Nam indicates that the Prime Minister has agreed on the roadmap towards the ratification of ILO Conventions, including the adoption of the minimum wage law by Parliament, envisaged for 2015, and the ratification of Convention No. 131 during the 2016–20 period. The Government of Gambia indicates that it has amended its laws to give effect to the instruments and specifies that the possibility of ratifying the Convention is the subject of tripartite discussion. According to the Government of Luxembourg, there is no specific obstacle to the ratification of the Convention and this possibility will be envisaged as part of broader action on the ratification of ILO Conventions. The Government of Mauritania, which has already ratified Convention No. 26, indicates that Convention No. 131 and Recommendation No. 135 will be submitted to Parliament, in accordance with article 19 of the Constitution. The Government of Gabon also reports that there is no particular obstacle preventing the ratification of Convention No. 131, which could be resubmitted to Parliament. The Government of Tunisia is carrying out an in-depth review of the possibility of ratifying Convention No. 131 and observes that several factors are likely to facilitate ratification, and particularly the fact that Tunisia has already ratified Conventions Nos 26 and 99 and that the principles of the Convention are set out in national law and practice. Finally, the Government of Oman refers to the amendments to the Labour Code and the decisions taken relating to minimum wage fixing to give effect to the provisions of the Convention. It adds that some legislative difficulties have arisen and that certain practices will have to be reviewed to ensure compliance with the relevant international standards. The Government concludes that the possibility of ratifying the Convention is being examined by the Social Dialogue Commission.

365. A tripartite review of the possibility of ratifying the Convention is envisaged in several member States. In Colombia, the Standing Dialogue Commission on Wage and Labour Policies in May 2012 approved the creation of a tripartite subcommission responsible for international issues in the field of labour, which will examine the possible ratification of the Convention. In Suriname, the establishment of a minimum wage system is a priority, and the Government indicates that the Minister of Labour has discussed the matter with the Labour Advisory Board and that the social partners, meeting in a preparatory commission, are currently seeking consensus. The Government

¹ Algeria, Argentina, Bahrain, Barbados, Belarus, Cabo Verde, China, Eritrea, Greece, Ireland, Myanmar, Pakistan, Qatar, Russian Federation, Saudi Arabia, Slovakia, South Africa, Sweden (two workers' organizations and an employers' organization are, however, of the view that the Convention cannot be applied in Sweden), Thailand, Timor-Leste, Uzbekistan and Bolivarian Republic of Venezuela.

of Seychelles reports that it is planning to adopt measures to give greater effect to the provisions of Convention No. 131 and Recommendation No. 135, including the ratification of the Convention. This issue has not yet been the subject of tripartite discussions, but could be reviewed by the National Consultative Committee for Employment (NCEE) when it resumes its meetings. The Association of Seychelles Employers emphasizes that the NCEE has not met for a year and recommends that it should be convened during the course of the year to explore the possibility of ratifying Convention No. 131. The Government of Honduras also indicates that there are no obstacles to the ratification of the Convention and that this will be the subject of tripartite review. The Government of Poland reports that, following a proposal made by the Independent and Self-Governing Trade Union “Solidarnosc” (NSZZ) and the All-Poland Trade Unions Alliance (OPZZ) to ratify several ILO Conventions, including Convention No. 131, the Tripartite Commission for Socio-Economic Affairs has agreed to set a timetable to examine the possibility of ratifying the Conventions in question. In a direct request in 2010 under Convention No. 26, the Committee noted the statement by the Government of Fiji that this issue would be put before the Employment Relations Advisory Board.

366. The Government of Bahamas indicates that the possibility of ratifying the Convention will be the subject of a tripartite review, while the Government of Benin reports that it intends to launch, in due course, the procedure for ratifying the Convention, although neither of them specifies the time frame within which this procedure could be initiated. The Government of Mozambique reports that it will be possible to ratify the Convention in future, when the appropriate conditions are met. The National Confederation of Independent and Free Trade Unions of Mozambique (CONSILMO) considers that it is imperative to support the ratification of Conventions, and particularly of Convention No. 131. Finally, according to the report communicated by the Government of Georgia, a tripartite training seminar on the minimum wage was organized in March 2013, with the participation of the World Bank and the ILO. At the end of the seminar, the participants agreed to cooperate with a view to developing minimum wage fixing machinery at the national level. The Government indicates that the Ministry of Employment, Health and Social Affairs is working on the issue of ratifying ILO Conventions, without specifically mentioning Convention No. 131, and that it would like to receive ILO assistance in this regard.

367. Several governments² indicate that the possibility of ratifying the Convention has not yet been the subject of tripartite discussions. According to the information provided by the Government of the Czech Republic, this issue was discussed briefly on the occasion of the 1992 General Survey on minimum wages, although no definitive

² Israel, Panama, Peru, Philippines, Samoa (which specifies that this issue will be examined in future), Togo (in its 2012 report on the application of Convention No. 26, the Government however undertook to examine carefully the possibility of ratifying Convention No. 131), United States, Zimbabwe. This is also the case of the Government of Bulgaria. However, the Confederation of Independent Trade Unions in Bulgaria (KNSB/CITUB) considers that, although Bulgaria has not ratified Convention No. 131, it has made a firm commitment to introducing and maintaining effective minimum wage fixing machinery, in view of its ratification of Convention No. 26. In Switzerland, the possibility of ratifying the Convention has not been the subject of tripartite discussions either. While specifying that it is not planning to change Swiss law or practice on minimum wage fixing, the Government states that, following a popular initiative calling for the introduction of a statutory national minimum wage, the Swiss people will be asked to decide on this issue through a popular vote, at the latest in 2016. The Swiss Federation of Trade Unions is however in favour of the ratification of Convention No. 131. The Government of Afghanistan indicates that, if it decides to ratify the Convention, this will be the subject of tripartite discussions. Finally, the Governments of Iceland and Saint Vincent and the Grenadines consider that there appear to be no difficulties preventing the ratification of the Convention, while specifying that no discussions have so far been held on the possibility of ratification.

decision was reached. The Czech–Moravian Confederation of Trade Unions (CMKOS) is however in favour of the ratification of the Convention. According to the information provided by the Government of Botswana, it is planned to carry out a study on the minimum wage in 2013–14, which will provide guidance on the action to be taken. The Government adds that national law is already in compliance with Convention No. 131. Finally, the Government of Jordan considers that some amendments will have to be made to the national legislation to bring it into line with the provisions of Convention No. 131 and Recommendation No. 135, which will speed up the prospects for the ratification of the Convention.

368. Some governments (Hungary, Islamic Republic of Iran, Madagascar and Malaysia) emphasize the similarities between their national legislation and the provisions of Convention No. 131 and Recommendation No. 135, without however referring to the possibility of ratifying the Convention. The Government of Côte d’Ivoire also indicates that national law and practice give full effect to Convention No. 131 and Recommendation No. 135, while specifying that no steps for the ratification of the Convention are planned at present. The General Confederation of Enterprises of Côte d’Ivoire, however, encourages the Government to ratify the Convention.

369. Without excluding the ratification of Convention No. 131, the Government of Belgium recalls that the main reason given at the time of the 1992 General Survey for not having yet ratified the Convention was that the absolute freedom of the social partners in carrying out wage negotiations would not be compatible with several provisions of the Convention, including Article 2(1) under the terms of which minimum wages shall have the force of law, and Article 4, which makes provision, whenever it is appropriate, for the participation of persons having recognized competence for representing the general interests of the country. The Government adds that the scope of application of Convention No. 131 is broader than that of Convention No. 26 and considers that its ratification could result in modifications in wage-fixing machinery in the public service and public enterprises. The Government, therefore, considers that it would be necessary to have information on the scope of several provisions of Convention No. 131 in order to determine more accurately the impact of ratification. In joint comments, the General Confederation of Liberal Trade Unions of Belgium (CGSLB), the Confederation of Christian Trade Unions (CSC) and the General Labour Federation of Belgium (FGTB), after describing the Belgian minimum wage system, consider that it is not far from meeting the requirements of Convention No. 131. However, given the sensitivity of wage policies, these organizations are not opposed to the approach taken by the Government, which involves raising certain questions concerning the scope of the Convention in order to assess as precisely as possible whether – as they believe – Belgium is able to ratify the Convention.

370. Finally, certain governments do not plan to ratify the Convention. For example, the Government of Estonia notes that there are no major obstacles to the ratification of Convention No. 131, but that it will not be ratified for the time being for reasons relating to the availability of human resources and national priorities. The Government of Italy merely indicates that the non-ratification of the Convention is not due to technical reasons. The Government of Singapore considers that the effectiveness of minimum wage systems has not been clearly demonstrated and that the national approach, based on wage guidelines issued by the Government each year, has avoided the rigidities of the minimum wage and its possible repercussions on economic competitiveness and employment opportunities in the country. While indicating that the Minimum Wages Board operates in line with Convention No. 131, the Government of Bangladesh indicates that it gives more importance to the provisions of the Convention than its

ratification. The Government of Jamaica indicates that it has no intention of ratifying Convention No. 131 in the immediate future as it has already ratified Convention No. 26.

371. Other governments refer to specific obstacles to the ratification of the Convention. For example, the Government of Canada, while considering that its legislation presents a high degree of compliance with the general principles of Convention No. 131, indicates that it is not planning to ratify it at present because of the problems involved in implementing its specific requirements in the 14 Canadian jurisdictions. In India, according to the information provided by the Government, minimum wages have been fixed for 46 professional categories at the federal level and 1,679 at the state level. A proposed amendment for the coverage of all categories of workers under the 1948 Minimum Wage Act is currently being examined and the Convention could only be ratified when this amendment has been adopted.

372. The Government of Cambodia remains silent on the possibility of ratifying the Convention, but reports that only one sector is currently covered by a minimum wage and that, in view of the lack of human and financial resources, it is unlikely that this coverage will be extended to other sectors. The Government of Mauritius also cites the coverage of the minimum wage system as an obstacle to ratification. It notes that 20 per cent of private sector workers are not covered by the minimum wage regulations, while indicating that the discussions and consultations that are to be held with a view to the introduction of a national minimum wage could contribute to the resolution of this problem. The Confederation of Private Sector Workers indicates that certain sectors, including the services sector, are not covered by any minimum wage fixing machinery. It considers that ratification of Convention No. 131 could offer a solution if a generally applicable minimum wage were fixed. It also believes that ratification of the Convention would make it possible to correct the current archaic system, under which a worker performing a specific type of work is entitled to a different minimum wage depending on the sector. The Government of Mali also reports obstacles to ratification, and specifically the requirement to establish a system of minimum wages covering all groups of wage earners, whose terms of employment are such that coverage would be appropriate, and the requirement for their regular adjustment. The Government of Kuwait also refers to obstacles related to the definition of the term “wage” and would like this concept to be reviewed.

373. Several governments invoke economic reasons justifying their decision not to proceed with the ratification of the Convention in the near future. Accordingly, although indicating in general terms that the minimum wage fixing machinery is in compliance with the provisions of the instruments, the Government of Indonesia states that it is unable to ratify Convention No. 131 and explains that, because of the insufficient financial capacity of some companies in the country, it has established a mechanism for postponing the application of the minimum wage to ensure the survival of these companies and job opportunities. The Government of Ethiopia reports that measures have been taken to resolve the problem of unemployment in the country, including a policy intended to attract foreign investors. It considers that wage flexibility rather than rigidity is desirable in the labour market and that, given the global economic crisis and the national situation, the ratification of Convention No. 131 could aggravate the problem of unemployment in the country. Consequently, wages are currently fixed through collective agreements, especially in the private sector. However, the Government indicates that studies could be carried out in the near future with a tripartite approach, taking into account the objectives of the Convention and the financial capacity of employers, with a view to the possible ratification of the Convention.

374. The Government of Turkey, without taking an explicit position on the possibility of ratifying Convention No. 131, mentions as an obstacle the fact that the Convention and the Recommendation insist on the needs of the worker's family being taken into account when fixing minimum wages, while the national legislation makes no reference to this issue. The Turkish Confederation of Employers' Associations (TİSK) considers that the national minimum wage system is not in compliance with Convention No. 131 and emphasizes that only inflation is taken into consideration for fixing the minimum wage. For its part, TÜRK-İŞ is in favour of ratification of the Convention. Minimum wage fixing criteria are also one of the obstacles to ratification mentioned by the Government of the United Kingdom.³ More specifically, it points out that the national legislation does not take into account the workers' family situation or relative living standards. The Government adds that, although Employer and Worker representatives may submit evidence to the Low Pay Commission, they do not play a direct role in fixing minimum wage rates. For these reasons, and while considering that national legislation is in line with the basic principles of the Convention, the Government states that it has no intention of ratifying the Convention. The Trades Union Congress (TUC), however, believes that the Government should ratify the Convention, as it actively supports both the principle and the practice of a national minimum wage. According to the TUC, the arguments put forward by the Government are merely technical, their importance is overstated, and they should not stand in the way of the ratification of Convention No. 131.

375. Finally, the governments of several countries in which minimum wages are essentially fixed through collective bargaining, several of which are parties to Convention No. 26, consider for that reason that ratification of the Convention is not possible. For example, the Government of Germany indicates in its report that it is opposed to the adoption of a statutory general minimum wage system considering that the Convention is not compatible with the national legislation.⁴ The Government of Cyprus states that when Convention No. 131 was last reconsidered in 1990, the possibility of ratifying it was excluded as this would have resulted in conflict with the industrial relations system based on free collective bargaining and the use of collective agreements as the main method of determining terms and conditions of employment. Additionally, according to the Government, any modifications to the minimum wage fixing machinery would undermine the functioning of the existing system of non-legislative enforcement of collective agreements. Similarly, the Government of Denmark has no intention of ratifying the Convention because a statutory minimum wage has not been established, although it adds that Denmark is in full compliance with the principles and spirit of the Convention.

376. The Government of Austria also believes that its minimum wage fixing machinery, based on the negotiation of collective agreements, is perfectly satisfactory and that the introduction of a statutory minimum wage would have a negative impact on the system. It is not, therefore, planning to ratify Convention No. 131. The Federal Economic Chamber indicates that Austria has not ratified the Convention because Employer and Worker representatives agree that the minimum wage will not be fixed in the manner

³ The United Kingdom had ratified Conventions Nos 26 and 99, but denounced them on 25 July 1985 and 16 August 1994, respectively.

⁴ In this regard, the German Confederation of Trade Unions (DGB) believes that the Government's arguments are based on a misinterpretation of Convention No. 131 and considers that its ratification, by creating a safety net for workers, would prevent the erosion of the current system for fixing minimum wages, which is marked by shrinking coverage and the inability of the social partners to negotiate. Most recently, there appears to be a change in the position of the German Government and a national minimum wage could be introduced in 2015.

envisaged in the Convention, but through collective agreements, while the Federation of Austrian Industries believes that ratification of the Convention is not necessary because minimum wages are already fixed for most economic sectors, in view of the broad coverage of collective agreements. Similarly, the Government of Norway expresses the view that ratification of Convention No. 131 would result in its national wage-fixing system, which is based on the negotiation of collective agreements, being undermined, in particular because of Article 2(1) of the Convention, which provides that minimum wages shall have the force of law and shall not be subject to abatement. Finally, the Government of Finland indicates that Convention No. 131 has not been ratified because the Finnish ILO Committee considers that its aims differ from the principles followed in Finland and that national law and practice clearly differ from the provisions of the Convention. The Government of Sweden remains silent on the possibility of ratifying the Convention. However, it reports that the Swedish Trade Union Confederation (LO), the Swedish Confederation for Professional Employees (TCO) and the Swedish Confederation of Professional Associations (SACO) indicated jointly that they did not reply to the report form for the General Survey because they consider that the Convention would not be applicable in Sweden, where wages and other terms and conditions of employment are regulated by collective agreements.

377. Regarding certain arguments that Convention No. 131 is incompatible with national minimum wage fixing machinery based on the conclusion of collective agreements, the Committee recalls that Convention No. 131 and Recommendation No. 135 allow minimum wage fixing through collective agreements and do not require the introduction of a statutory minimum wage. The requirement to give the force of law to minimum wages set out in Article 2(1) of the Convention, whatever procedure is used to fix them, simply translates the requirement to render them binding upon the employers and workers to whom they are applicable. This provision does not require collective agreements fixing minimum wages to be covered by an extension procedure.

378. The question that remains regarding the compatibility of Convention No. 131 with minimum wage systems based on collective bargaining is that of the coverage of the minimum wage system. The situation in Austria or Belgium, for example, where the coverage rate of collective agreements exceeds 90 per cent of wage earners, is very different from that in Switzerland, where the rate is lower than 50 per cent. Although the minimum wage systems in place in Austria and in Belgium appear to comply with the requirements of the Convention, the obstacle that seems to arise in the cases of Germany and Switzerland is not related to the machinery for fixing minimum wages, but their coverage (around 60 and 50 per cent, respectively). Indeed, although Article 1(3) of the Convention permits the exclusion of certain groups of wage earners from its scope of application, the number and groups of wage earners who are not covered should be kept to a minimum, as provided for in Paragraph 4 of Recommendation No. 135. It is perhaps from this perspective of the broadening of the coverage of minimum wages that debates on the question of introducing a national minimum wage have arisen in Switzerland and Germany.

379. With regard to the application of Convention No. 131 to the public service and public enterprises, the Committee wishes first to emphasize that the Convention contains no requirement for a single system in which identical minimum wage fixing machinery applies to both the public and private sectors. Although, in a certain number of countries, labour legislation, including minimum wage laws, applies to public enterprises and contractual staff in the public service, it is in practice frequently the case that a specific regime that falls under administrative law applies to public employees of the State and the regions. The Committee is not aware of any national legislation that does not

establish a salary scale for these workers. In some countries, it is also laid down that the remuneration of public officials may not be lower than the national minimum wage, but this is not systematically the case. The essential elements to be observed in relation to Convention No. 131 are the full consultation of the social partners when determining wage scales and the fixing of wage rates, taking into account the criteria set out in the Convention. This seems to be the case, among other countries, in Belgium, where a special negotiating procedure applies to the civil service. However, when ratifying the Convention, other countries considered that they were not yet in a position to extend its application to public officials and excluded this category of employees in a statement made in accordance with Article 1(3) of the Convention.

380. Certain reports refer to minimum wage fixing criteria as obstacles to the possible ratification of the Convention. The Committee notes in this regard that the Convention requires the needs of workers and their families, as well as economic factors, to be taken into account “so far as possible and appropriate” and “in relation to national practice and conditions”. With reference to the needs of workers and their families, national provisions can naturally take into account the fact, for example, that most families in the country have two breadwinners and that the minimum wage policy is supplemented by a system of family allowances. In any event, taking these two types of factors into account simultaneously may give rise to a fair balance between them and the fixing of minimum wage rates that reflect the national situation and level of socio-economic development of the country, whether developed, developing or emerging.

381. Questions have also been raised in certain reports concerning the participation in the functioning of minimum wage systems of representatives of employers’ and workers’ organizations and persons representing the general interests of the country. In this regard, the Committee recalls that the Convention requires provision to be made for their direct participation in the operation of minimum wage fixing machinery “wherever it is appropriate to the nature of the minimum wage fixing machinery”, and that the arrangements for this participation can be defined at the national level.

Section 3. Need for ILO standards-related action

382. Among the member States that completed the report form on this point, the Governments of the Lao People’s Democratic Republic and of *Portugal* are of the view that Convention No. 131 and Recommendation No. 135 remain relevant. Moreover, the Governments of Bangladesh, Botswana, *Cuba*, Estonia and *Malta* consider that the revision of the existing instruments or the adoption of new instruments is not necessary. The Governments of Canada, Cyprus, Iceland and the Philippines also consider that standard-setting action in this area is not required, while the Government of *Latvia* is of the same opinion, adding that the economic situation varies depending on the country and it would be impossible to adopt standardized minimum wage fixing machinery. The Governments of Luxembourg and Mali are also of the view that a revision of the existing instruments is not necessary. Finally, the Governments of Austria, Belgium, *Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina and Republika Srpska), *Burkina Faso*, *Chile*, Côte d’Ivoire, Denmark, *Guatemala*, *Japan*, *Republic of Korea*, *Lebanon*, Malaysia, Maldives, New Zealand, *Sri Lanka*, Togo, United Kingdom and United States indicate that they have no proposals to make on this point.

383. In its comments, the ITUC expresses the view that there is no need for a new standard on minimum wages, but that the ILO should develop a major programme of work to promote the ratification and implementation of Convention No. 131 as income

security is at the heart of the ILO's mandate. This programme should also include the strengthening of the ILO knowledge base, research and advisory capacity on minimum wages in order to provide evidence-based technical assistance to constituents.

384. The Governments of *Australia* and Trinidad and Tobago are of the view that the instruments dealing with minimum wage fixing and any future standards-related action in this area should be considered in the context of the Standards Review Mechanism that is currently being discussed by the ILO Governing Body. Without referring to any specific need in this area, the Government of Mauritania observes that any eventual standards-related action by the ILO in the field of minimum wage fixing should take into account the differences in economic and social development between countries.

385. Some countries raise the possibility of revising the existing minimum wage fixing instruments. The Governments of Jamaica, Mauritius and Seychelles envisage their consolidation in a single instrument. The Governments of *Antigua and Barbuda* and Jordan suggest that Convention No. 131 should be revised, without specifying the points on which a revision should focus. The Government of Gabon would be in favour of the revision of the existing instruments to provide greater clarity on minimum wage fixing machinery, while the Government of Senegal would support their adaptation to current realities. The Government of Kuwait proposes a review of the concept of wages as set out in the various international labour Conventions and examination of the possibility of identifying a new concept agreed upon internationally which would help to reconcile the viewpoints of member States. The Government of *Serbia* considers it necessary to develop a formula for fixing minimum wages. The Government of Zimbabwe considers that there is a need to refine Recommendation No. 135 by clearly indicating the different elements of minimum wage fixing and taking into account changes in the labour market. Finally, without mentioning the need for a revision of existing standards, the Government of Suriname proposes that the tripartite constituents could consider the possibility of developing guidelines to assist member States in fixing minimum wages and that the ILO could clarify the link between statistics on poverty and the minimum wage rate.

Section 4. General conclusions

386. The Committee welcomes this opportunity to examine the issue of minimum wage fixing, and particularly national law and practice of ILO member States in light of Convention No. 131 and Recommendation No. 135. It also welcomes the particularly high number of governments, as well as employers' and workers' organizations, which have provided reports and comments for the preparation of this General Survey. The Committee has benefited from information on national law and practice provided by 129 governments, information supplied by 36 national employers' organizations and one international employers' organization, 56 national workers' organizations and two international workers' organizations regarding the situation with regard to minimum wages in 58 countries.

387. Since the publication of the last General Survey on this subject in 1992, the world has experienced many far-reaching transformations. The early 1990s were particularly marked by the transition to a market economy in several Central and Eastern European countries, and by the structural adjustment policies with which certain developing countries were confronted. Over the past two decades, the globalization of trade has accelerated, even though it has been accompanied by a certain increased awareness of the need to take into account the social dimension. Many countries have continued their

economic development and major emerging powers have made their appearance. However, important regions of the world have been affected by an economic and employment crisis, including industrialized countries, and many of them are subject to severe austerity measures. Moreover, globalization and economic fluctuations raise particular issues affecting vulnerable groups, deserving detailed discussion by this Survey.

388. **Minimum wage systems.** Contrary to Conventions Nos 26 and 99, Convention No. 131 is not limited to calling for the adoption of minimum wage fixing machinery for specific categories of workers. It requires the effective fixing of minimum wages in the framework of a system characterized by its broad scope of application; full consultation of the social partners, and even their direct participation, on an equal footing in the operation of the machinery; the application of both economic and social criteria in the determination of minimum wage rates; the adjustment of minimum wages from time to time taking into account fluctuations in national indicators and other national conditions; and the adoption of appropriate measures to ensure the effective application of the provisions relating to minimum wages. The Committee notes that many States that have not ratified Convention No. 131 have nevertheless established a minimum wage system that is in conformity with all of the provisions of the Convention. This situation is undoubtedly related to the flexibility offered by Convention No. 131, which is one of the most flexible ILO instruments in terms of its methods of application. For example, Convention No. 131 does not require the adoption of a national minimum wage, nor its determination by law. Minimum wage rates have to take into account both the needs of workers and their families and economic factors, which makes it possible for countries at very different levels of development to give effect to its provisions.

389. **The role of the social partners.** As it has been regularly recalled throughout this survey, the obligation to fully consult the employers' and workers' organizations concerned at all stages of the minimum wage fixing process is one of the core elements of the establishment and maintenance of a minimum wage system. In its 1992 survey, the Committee called on governments to "take the necessary action to ensure that the consultation ... is useful and effective", that is to say that the social partners are "genuinely given an opportunity to express their views, in full knowledge of the facts, that their views are taken into consideration at the appropriate time, and that their consultation and participation are on an equal footing" (paragraph 425). **The Committee wishes to emphasize once again that consultations need to be genuine, in the sense of a process that is receptive to constructive and balanced proposals and seeks to accommodate in good faith, in so far as possible, the inevitably conflicting interests of the social partners.** Moreover, wherever appropriate and taking into account the nature of the existing minimum wage fixing machinery, provision has to be made for the direct participation in its operation of representatives of employers' and workers' organizations concerned, for example through advisory bodies or the fixing of minimum wages directly through collective bargaining.

390. The Committee, however, notes with concern that in some cases, when minimum wages are fixed by government decision, consultations are either non-existent, or are limited to a formal exchange of information devoid of any intention to engage in meaningful dialogue or explore consensual solutions. In discharging its functions in relation to the regular supervision of the application of the minimum wage fixing Conventions, the Committee has had the opportunity to emphasize that the letter and spirit of these instruments is not complied with, not only when there is no institutionalized framework for conducting consultations, but also when existing consultative bodies remain inactive for long periods of time, or when consultations are

conducted in such a marginalized manner that they clearly have no impact whatsoever on government decisions.

391. On the other hand, with reference to the conclusions of its 2000 General Survey on the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the Committee draws attention to the fact that the obligation to carry out full consultations should not be understood as implying an obligation to reach a negotiated agreement. The decision lies ultimately with the government, which should nonetheless show that in taking its decision all the different proposals have been duly considered and every effort has been made to meet divergent expectations. In this respect, the Committee notes that some of the comments of employers' and workers' organizations, reviewed in Chapter V of the present survey, seem to be based on the assumption that under Convention No. 131 the revision of the minimum wage is dependent on the holding of conclusive negotiations, and that any minimum wage rate which has not been agreed upon by all the parties would therefore somehow contravene the Convention. The Committee recognizes, of course, that minimum wage rates that are negotiated collectively (for instance, minimum wage rates set through collective bargaining and given the force of law by government decision) offer the best guarantees for social cohesion, but the obligation to consult the social partners should not be misinterpreted as requiring that any decision related to the operation of the minimum wage system should be taken by common agreement.

392. *Scope of application.* The provisions of Convention No. 131 and Recommendation No. 135 constitute progress in relation to earlier ILO instruments in terms of the scope of application of national minimum wage systems. While it is for the competent authorities in each country to determine the scope of these systems, their decision has to be taken in agreement, or at least after full consultation with the representative organizations of employers and workers concerned, and the number and categories of wage earners excluded from the coverage of the system should be kept to a minimum. The Committee, however, notes that in many cases the workers who are not covered by the protection of a minimum wage are often the most vulnerable categories of workers, such as agricultural workers (Bangladesh, certain provinces of Canada, *Lebanon* and Pakistan) and domestic workers (*Republic of Korea*, Gambia, Honduras and Tunisia). The Committee recalls in this respect that the Domestic Workers Convention, 2011 (No. 189), which entered into force on 5 September 2013 and which has currently been ratified by ten countries, requires States parties to take measures to ensure that domestic workers are covered by the minimum wage system, where such a system exists, and it welcomes the positive changes that it has been able to note in this area in certain countries, such as *Chile*, Philippines and South Africa.

393. *Minimum wage fixing machinery. Convention No. 131 does not require or promote any particular machinery for setting minimum wages or for consulting the social partners, but sets out in broad lines the principles that should guide the process, irrespective of the specific technique or method that may be in operation in the country.* Indeed, Convention No. 131 offers broad latitude to member States in their choice of minimum wage fixing machinery. In most countries, minimum wages are set by the public authorities after consultation of the social partners, generally through a tripartite advisory body, whether it is specialized, such as a wages board (Barbados, Kenya, Malaysia and Viet Nam), or of broader competence (*Cameroon*, France, Montenegro and Timor-Leste). In certain cases, consultations are held directly with the social partners (*Australia*, China and Spain). Minimum wages can also be fixed by tripartite (*Mexico* and the Philippines) or bipartite decision (Austria, Belgium and Sweden). *In light of the issues raised in certain reports, the Committee wishes to*

clarify that the determination of minimum wages by collective bargaining is one of the forms for fixing minimum wages provided for in Article 2(2) of Convention No. 131 and Paragraph 6(e) of Recommendation No. 135, provided that the minimum wage provision of the collective agreement is given the force of law. It notes that any difficulties that may arise in this respect tend to concern the coverage of the collective agreements in relation to the provisions of Convention No. 131 on the scope of application of minimum wages. In certain countries, several methods have been introduced and are mutually complementary, thereby ensuring broader coverage of the minimum wages system (*Guatemala* and *South Africa*) or allowing higher minimum wages to be set in certain sectors (*Argentina, Bulgaria* and *Madagascar*).

394. *Coverage of minimum wages.* There are also many variations in the coverage of minimum wages. Certain countries have chosen to establish a system of a single minimum wage covering all sectors and regions (*Plurinational State of Bolivia, Mali, Serbia, Thailand* and *Turkey*), which are sometimes supplemented by sectoral (*Malta* and *Uruguay*) or regional minimum wages (*Brazil*). In other countries, the system is based on regional minimum wages (*Indonesia* and *Japan*) or includes a dual minimum wage rate, which are determined at the federal level and the state level (*United States*). In many countries, minimum wage rates are determined by sector (*Mauritius* and *Panama*) or occupational category (*Costa Rica* and *Slovakia*), and these different systems may be combined. This variety in practice is not at all contrary to Convention No. 131, which also allows States great flexibility in this area. However, these measures also have to be examined in light of the principle of equal remuneration for work of equal value set out in Convention No. 100, particularly where different minimum wage rates are set for types of work generally performed by women, such as domestic work.

395. *The Committee observes that national practices based on different minimum wage rates for men and women are in the process of disappearing and it hopes that they will be totally abolished in the near future.* In a number of countries, reduced minimum wage rates have been established for young workers with a view to improving their employment opportunities (*Chile, New Zealand, Netherlands* and *United Kingdom*). *In this respect, the Committee has consistently taken the view that special attention should be paid to the risk of discrimination and the need to comply with the overriding principle of equal remuneration for work of equal value.*

396. *The Committee understands that, in a context of rampant youth unemployment in many parts of the world, often exacerbated by the ongoing economic recession, lowering the statutory minimum wage for those entering the labour market may be one of the crisis response measures that can be considered. It would be more difficult to understand, however, if such policies were based on the assumption that all young workers (who are in some cases “defined” as including persons up to 25 years of age) without distinction and irrespective of their job or position are less productive due to a lack of experience, and therefore merit lower remuneration.* The Committee notes in this respect that in many countries (*Argentina, Austria, Kenya* and *Nepal*), where there used to be a policy of differentiated minimum wages for young workers, there is a growing tendency to eliminate such differences as being contrary to the fundamental principles of equality and non-discrimination in employment and occupation. Lower minimum wage rates are also sometimes set for workers with disabilities. However, the situation of these workers is most frequently covered by requests for individual exemptions, the validity of which has to be examined in light of the provisions of the Convention respecting the binding nature of minimum wages. *Finally, the Committee hopes that the national provisions in force in some countries which explicitly provide*

for reduced minimum wage rates for migrant workers will soon be repealed so that these workers benefit from equality of treatment with nationals in relation to wages.

397. **Criteria for fixing minimum wages.** One of the novelties introduced by Convention No. 131, as compared to the earlier instruments on minimum wage fixing, is the list of elements, both social and economic, to be taken into consideration when fixing and adjusting minimum wage levels from time to time. The Convention was not intended to set out an exhaustive list, nor was it intended to establish any hierarchy between social and economic considerations. Moreover, the Convention makes it sufficiently clear that those criteria may not fit all different contexts and circumstances and should therefore be applied, as appropriate, in light of varying national conditions. As the Committee concluded in its 1992 survey, the “validity and universality of these elements appear to be corroborated by the information sent in by the governments which also show that these elements have in fact been taken into consideration in fixing minimum wages or, more frequently, have been embodied in legal instruments which establish minimum wage fixing machinery. ... [Yet], the level of minimum wages is closely linked to the economic, social and political circumstances of each country. Consequently, the weight given to each of these elements will vary from country to country according to these circumstances” (paragraphs 427–428).

398. As the Committee has emphasized on numerous occasions, the minimum wage is intended to provide a legally binding indication of the minimum permissible wage level practised nationally, and it must therefore directly and faithfully mirror the social and economic realities in the country. *Minimum wages that are maintained either excessively low so that they bear no relationship with evolving indicators, such as inflation, or unreasonably high so that they threaten the financial sustainability of enterprises or are unenforceable in practical terms, are unfair and unproductive. The need to ensure that proper weight is given to social and economic conditions when fixing minimum wages points to two further considerations: first, the need for detailed and reliable statistical information to serve as a basis for technical discussions; and second, the essential role of employers’ and workers’ organizations in conveying labour market realities as experienced by those directly concerned.*

399. The Committee recalls that the Convention does not contain any quantified assessment of what a decent minimum wage level might be, for instance by reference to the benchmarks of the average wage or the median wage. The Committee understands that many countries among those reviewed in the present survey follow closely the evolution of the minimum wage in comparison with that of the average wage, or even set medium- or long-term targets in terms of the minimum wage gradually reaching a certain proportion of the national average wage. The Committee recognizes that the average wage in most cases offers a tangible and uniform yardstick for measuring minimum wage levels, especially when drawing up comparative data at the regional or global levels, but it considers that the absence of any express correlation between the minimum and the average or median wage in the Convention allows the Convention to cover different systems and approaches to minimum wage fixing in a much more comprehensive manner.

400. **Binding nature of minimum wages and enforcement measures.** The legally binding nature of minimum wages is probably the defining characteristic of this concept. Whatever the method for determining its level, once it has been established, the minimum wage defines the minimum rate (whether hourly, daily or monthly) payable to a worker for the work performed, and no payment at a lower rate is permitted under penalty of legal sanctions. *However, to ensure their effective implementation in practice, minimum wages, no less than any other labour rights, depend on a system of*

inspection and sanctions. Clearly, the labour inspection services and penalty systems are central to any mechanism to ensure compliance with minimum wages. That involves the availability of a sufficient number of trained inspectors, with adequate material resources and sufficient powers to be able to discharge their duties, as well as effective procedures for the application of penalties in the event of violations. Moreover, if their protection is to be effective, the workers affected need to have access to rapid procedures to recover the amounts owed to them and to be afforded protection against any risk of victimization for having asserted their rights. As recalled in Recommendation No. 135, the contribution of employers' and workers' organizations in efforts to protect workers against abusive treatment can also be a determining factor and the Committee can only encourage them to play their role to the full in this respect. These measures can be complemented by incentives for improved compliance with the law, such as through capacity building, government support and other facilitation.

401. Regrettably, experience shows that poor controls and insufficiently dissuasive penalties remain far too common in many parts of the world and continue to allow large-scale violations of minimum wages. In many countries, budgetary difficulties constitute important limitations on the capacity to enforce national labour legislation. ***However, the Committee can only reiterate that a minimum wage system that is not backed up by robust measures for ensuring compliance is of little practical use not only to those who are most in need of minimum wage protection but also to employers who comply. This ultimately undermines the very objective and purpose of the Convention.***

402. One of the greatest challenges lies in ensuring compliance with minimum wage provisions in the informal economy, and only innovative solutions, such as the programme implemented in India under the MGNREGA Act (referred to in paragraph 324) offer a basis for real progress in this regard. Other innovative approaches in the formal economy are to be welcomed, such as the activities undertaken by the countries participating in the ILO *Better Work* programme for the garment sector (for instance, Indonesia and Jordan) and the initiatives launched in the context of corporate social responsibility and international framework agreements, which aim to ensure compliance with minimum wages throughout the production chain. A combination of such efforts is bound to achieve an improvement in the application of minimum wage provisions and better protection for workers at the bottom of the wage scale. However, the prime responsibility in this regard lies with governments, which need to enjoy the full support of the social partners if these provisions are not to remain a dead letter.

403. ***Current status of the Convention. The Committee considers that the objectives set out in Convention No. 131 and Recommendation No. 135 remain just as relevant today as they were when they were adopted in 1970 despite the passage of true changes and developments affecting the world of work.*** In effect, the Convention merely reflects the principle, which is central to the 1944 Declaration of Philadelphia and the 2008 ILO Declaration on Social Justice for a Fair Globalization, that “labour is not a commodity”. In other words, the price of labour cannot be determined exclusively through the application of the laws of supply and demand. The right of workers to fair remuneration is also recognized in several fundamental international instruments, such as the Universal Declaration of Human Rights and the United Nations International Covenant on Economic, Social and Cultural Rights. It is also an important instrument for employers as it seeks to level the playing field.

404. While setting out important principles, the Convention leaves governments, in full consultation with the social partners, a broad margin of discretion for the establishment of minimum wage fixing machinery, which can therefore really be “made to measure”

based on national characteristics. The Convention itself is very concise (it only contains five substantive Articles), with more detailed provisions being included in a Recommendation that is intended to provide additional guidance on a number of points. In the view of the Committee, this combination has allowed the Convention to retain its full relevance for all ILO member States, whether or not they are developing countries, irrespective of ratification or whether their economies are export oriented, and regardless of their institutional traditions.

405. *It is safe to conclude that the principles laid down in Convention No. 131 enjoy much wider acceptance than the mere number of ratifications seems to suggest.* The information provided by governments in their reports, which has been summarized in the previous section, shows that there are real prospects for the ratification of the Convention in 13 member States. The Committee also notes that many States that have not ratified the Convention have requested technical assistance and advice from the Office for the establishment or improvement of their minimum wage systems. There are also several countries which, even though they have established a minimum wage system of general application (including Argentina, Bahamas, Belgium, Colombia, Gabon, Luxembourg, Mali, Mauritania, New Zealand, Panama, Paraguay, Peru, Togo and Turkey), have not yet decided to ratify Convention No. 131 and remain bound by Convention No. 26 or Convention No. 99. There are also many countries which are not bound by any of the relevant ILO instruments even though they have a minimum wage system in operation (such as Cabo Verde, Greece, Indonesia, Israel, Russian Federation, Thailand and United Kingdom). Lessons may be drawn from countries which have already received ILO technical assistance to put in place a minimum wage system with a view to further assisting other countries and guiding ILO action in this regard.

406. Problems in the manner in which the Convention is applied in practice persist, in particular the establishment of minimum wages without associating employers' and Worker representatives with the operation of the minimum wage fixing process, or failing to ensure their participation on an equal footing and also the non-readjustment of minimum wage rates for such long periods of time that they no longer serve any purpose. Notwithstanding these difficulties, however, the Committee considers that, based on the review of state law and practice, there seems to be overwhelming recognition and support for the basic principles set out in the Convention, that is to say the need to fix a legally binding floor for the protection of low-skilled workers, the obligation to fully consult employers' and workers' organizations prior to any decision relating to the operation of minimum wage fixing machinery, and the requirement for review and adjustment of the minimum wage from time to time, as may be dictated by social and economic parameters. The Committee concludes that Convention No. 131 remains an up-to-date and topical instrument and that member States not yet parties to this Convention should be strongly encouraged to do so.

407. *Finally, the Committee considers that the objectives, principles and methods set out in Convention No. 131 and Recommendation No. 135 have not only resisted the economic, political and social transformations that the world has experienced since their adoption in 1970 but they also match perfectly public policies by which States aim at reconciling the objectives of economic development and social justice. The importance of social dialogue based on the principles of equality and non-discrimination that are at the core of these instruments represent a considerable asset for sustainable human development.*

Appendix I

Text of the relevant instruments

Convention No. 131

Convention concerning minimum wage fixing, with special reference to developing countries

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-fourth Session on 3 June 1970, and

Noting the terms of the Minimum Wage-Fixing Machinery Convention, 1928, and the Equal Remuneration Convention, 1951, which have been widely ratified, as well as of the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951, and

Considering that these Convention have played a valuable part in protecting disadvantaged groups of wage earners, and

Considering that the time has come to adopt a further instrument complementing these Conventions and providing protection for wage earners against unduly low wages, which, while of general application, pays special regard to the needs of developing countries, and

Having decided upon the adoption of certain proposals with regard to minimum wage fixing machinery and related problems, with special reference to developing countries, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-second day of June of the year one thousand nine hundred and seventy the following Convention, which may be cited as the Minimum Wage Fixing Convention, 1970:

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.

2. The competent authority in each country shall, in agreement or after full consultation with the representative organisations of employers and workers concerned, where such exist, determine the groups of wage earners to be covered.

3. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any groups of wage earners which may not have been covered in pursuance of this Article, giving the reasons for not covering them, and shall state in subsequent reports the positions of its law and practice in respect of the groups not covered, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such groups.

Article 2

1. Minimum wages shall have the force of law and shall not be subject to abatement, and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions.

2. Subject to the provisions of paragraph 1 of this Article, the freedom of collective bargaining shall be fully respected.

Article 3

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include:

- (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;
- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Article 4

1. Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 thereof can be fixed and adjusted from time to time.

2. Provision shall be made, in connection with the establishment, operation and modification of such machinery, for full consultation with representative organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned.

3. Wherever it is appropriate to the nature of the minimum wage fixing machinery, provision shall also be made for the direct participation in its operation of –

- (a) representatives of organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned, on a basis of equality;
- (b) persons having recognised competence for representing the general interests of the country and appointed after full consultation with representative organisations of employers and workers concerned, where such organisations exist and such consultation is in accordance with national law or practice.

Article 5

Appropriate measures, such as adequate inspection reinforced by other necessary measures, shall be taken to ensure the effective application of all provisions relating to minimum wages.

Article 6

This Convention shall not be regarded as revising any existing Convention.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

Recommendation No. 135

Recommendation concerning minimum wage fixing, with special reference to developing countries

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-fourth Session on 3 June 1970, and

Noting the terms of the Minimum Wage-Fixing Machinery Recommendation, 1928, the Minimum Wage Fixing Machinery (Agriculture) Recommendation, 1951, and the Equal Remuneration Recommendation, 1951, which contain valuable guidelines for minimum wage fixing bodies, and

Considering that experience in more recent years has emphasised the importance of certain additional considerations relating to minimum wage fixing, including that of adopting criteria which will make systems of minimum wages both an effective instrument of social protection and an element in the strategy of economic and social development, and

Considering that minimum wage fixing should in no way operate to the prejudice of the exercise and growth of free collective bargaining as a means of fixing wages higher than the minimum, and

Having decided upon the adoption of certain proposals with regard to minimum wage fixing machinery and related problems, with special reference to developing countries, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this twenty-second day of June of the year one thousand nine hundred and seventy, the following Recommendation, which may be cited as the Minimum Wage Fixing Recommendation, 1970:

I. PURPOSE OF MINIMUM WAGE FIXING

1. Minimum wage fixing should constitute one element in a policy designed to overcome poverty and to ensure the satisfaction of the needs of all workers and their families.
2. The fundamental purpose of minimum wage fixing should be to give wage earners necessary social protection as regards minimum permissible levels of wages.

II. CRITERIA FOR DETERMINING THE LEVEL OF MINIMUM WAGES

3. In determining the level of minimum wages, account should be taken of the following criteria, amongst others:
 - (a) the needs of workers and their families;
 - (b) the general level of wages in the country;
 - (c) the cost of living and changes therein;
 - (d) social security benefits;
 - (e) the relative living standards of other social groups;
 - (f) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

III. COVERAGE OF THE MINIMUM WAGE FIXING SYSTEM

4. The number and groups of wage earners who are not covered in pursuance of Article 1 of the Minimum Wage Fixing Convention, 1970, should be kept to a minimum.

5. (1) The system of minimum wages may be applied to the wage earners covered in pursuance of Article 1 of the Convention either by fixing a single minimum wage of general application or by fixing a series of minimum wages applying to particular groups of workers.

(2) A system based on a single minimum wage:

- (a) need not be incompatible with the fixing of different rates of minimum wages in different regions or zones with a view to allowing for differences in costs of living;
- (b) should not impair the effects of decisions, past or future, fixing minimum wages higher than the general minimum for particular groups of workers.

IV. MINIMUM WAGE FIXING MACHINERY

6. The minimum wage fixing machinery provided for in Article 4 of the Convention may take a variety of forms, such as the fixing of minimum wages by:

- (a) statute;
- (b) decisions of the competent authority, with or without formal provision for taking account of recommendations from other bodies;
- (c) decisions of wages boards or councils;
- (d) industrial or labour courts or tribunals; or
- (e) giving the force of law to provisions of collective agreements.

7. The consultation provided for in paragraph 2 of Article 4 of the Convention should include, in particular, consultation in regard to the following matters:

- (a) the selection and application of the criteria for determining the level of minimum wages;
- (b) the rate or rates of minimum wages to be fixed;
- (c) the adjustment from time to time of the rate or rates of minimum wages;
- (d) problems encountered in the enforcement of minimum wage legislation;
- (e) the collection of data and the carrying out of studies for the information of minimum wage fixing authorities.

8. In countries in which bodies have been set up which advise the competent authority on minimum wage questions, or to which the government has delegated responsibility for minimum wage decisions, the participation in the operation of minimum wage fixing machinery referred to in paragraph 3 of Article 4 of the Convention should include membership of such bodies.

9. The persons representing the general interests of the country whose participation in the operation of minimum wage fixing machinery is provided for in Article 4, paragraph 3, subparagraph (b), of the Convention should be suitably qualified independent persons who may, where appropriate, be public officials with responsibilities in the areas of industrial relations or economic and social planning or policy-making.

10. To the extent possible in national circumstances, sufficient resources should be devoted to the collection of statistics and other data needed for analytical studies of the relevant economic factors, particularly those mentioned in Paragraph 3 of this Recommendation, and their probable evolution.

V. ADJUSTMENT OF MINIMUM WAGES

11. Minimum wage rates should be adjusted from time to time to take account of changes in the cost of living and other economic conditions.

12. To this end a review might be carried out of minimum wage rates in relation to the cost of living and other economic conditions either at regular intervals or whenever such a review is considered appropriate in the light of variations in a cost-of-living index.

13. (1) In order to assist in the application of Paragraph 11 of this Recommendation, periodical surveys of national economic conditions, including trends in income per head, in productivity and in employment, unemployment and underemployment, should be made to the extent that national resources permit.

(2) The frequency of such surveys should be determined in the light of national conditions.

VI. ENFORCEMENT

14. Measures to ensure the effective application of all provisions relating to minimum wages, as provided for in Article 5 of the Convention, should include the following:

- (a) arrangements for giving publicity to minimum wage provisions in languages or dialects understood by workers who need protection, adapted where necessary to the needs of illiterate persons;
- (b) the employment of a sufficient number of adequately trained inspectors equipped with the powers and facilities necessary to carry out their duties;
- (c) adequate penalties for infringement of the provisions relating to minimum wages;
- (d) simplification of legal provisions and procedures, and other appropriate means of enabling workers effectively to exercise their rights under minimum wage provisions, including the right to recover amounts by which they may have been underpaid;
- (e) the association of employers' and workers' organisations in efforts to protect workers against abuses;
- (f) adequate protection of workers against victimisation.

Appendix II

List of ratifications of Convention No. 131 and reports received in accordance with article 19 of the ILO Constitution

Members	Convention No. 131	Report received	Comments of employers' organizations	Comments of workers' organizations
Afghanistan		X		
Albania	<i>Ratified 18/08/2004</i>	X		
Algeria		X	X	
Angola		–		
Antigua and Barbuda	<i>Ratified 16/09/2002</i>	X	X	
Argentina		X		X
Armenia	<i>Ratified 29/04/2005</i>	–	X	
Australia	<i>Ratified 15/06/1973</i>	X		X
Austria		X	X	X
Azerbaijan	<i>Ratified 11/03/1993</i>	X		
Bahamas		X		
Bahrain		X		X
Bangladesh		X	X	
Barbados		X		
Belarus		X		
Belgium		X		X
Belize		–		
Benin		X		
Bolivia, Plurinational State of	<i>Ratified 31/01/1977</i>	X	X	
Bosnia and Herzegovina	<i>Ratified 02/06/1993</i>	X		
Botswana		X	X	
Brazil	<i>Ratified 04/05/1983</i>	X	X	
Brunei Darussalam		–		
Bulgaria		X	X	X
Burkina Faso	<i>Ratified 21/05/1974</i>	X		
Burundi		–		
Cabo Verde		X		

Minimum wage systems

Members	Convention No. 131	Report received	Comments of employers' organizations	Comments of workers' organizations
Cambodia		X	X	
Cameroon	<i>Ratified 06/07/1973</i>	X		
Canada		X		
Central African Republic	<i>Ratified 05/06/2006</i>	X		
Chad		–		
Chile	<i>Ratified 13/09/1999</i>	X		
China		X		X
Colombia		X	X	X
Comoros		–		
Congo		–		
Costa Rica	<i>Ratified 08/06/1979</i>	X		
Côte d'Ivoire		X	X	
Croatia		–		
Cuba	<i>Ratified 05/01/1972</i>	X		
Cyprus		X	X	
Czech Republic		X		X
Congo, Democratic Republic of		–	X	
Denmark		X	X	
Djibouti		–		
Dominica		–		
Dominican Republic		–		
Ecuador	<i>Ratified 02/12/1970</i>	–		
Egypt	<i>Ratified 12/05/1976</i>	X		
El Salvador	<i>Ratified 15/06/1995</i>	X		
Equatorial Guinea		–		
Eritrea		X		
Estonia		X		
Ethiopia		X		
Fiji		–		
Finland		X	X	
France	<i>Ratified 28/12/1972</i>	X		
Gabon		X		
Gambia		X		
Georgia		X		
Germany		X	X	X
Ghana		–		
Greece		X		
Grenada		–		

List of ratifications of Convention No. 131 and reports received
in accordance with article 19 of the ILO Constitution

Members	Convention No. 131	Report received	Comments of employers' organizations	Comments of workers' organizations
Guatemala	<i>Ratified 14/06/1988</i>	X		
Guinea		–		
Guinea-Bissau		–		
Guyana	<i>Ratified 10/01/1983</i>	–		
Haiti		–		
Honduras		X		
Hungary		X		X
Iceland		X		
India		X		
Indonesia		X	X	X
Iran, Islamic Republic of		X		
Iraq	<i>Ratified 16/05/1974</i>	X		
Ireland		X		X
Israel		X		
Italy		X	X	
Jamaica		X		
Japan	<i>Ratified 29/04/1971</i>	X		X
Jordan		X	X	X
Kazakhstan		–		
Kenya	<i>Ratified 09/04/1979</i>	X	X	
Kiribati		–		
Korea, Republic of	<i>Ratified 27/12/2001</i>	X		X
Kuwait		X		
Kyrgyzstan	<i>Ratified 12/01/2007</i>	X		
Lao People's Democratic Republic		X		
Latvia	<i>Ratified 08/03/1993</i>	X		
Lebanon	<i>Ratified 01/06/1977</i>	X		X
Lesotho		–		
Liberia		–		
Libya	<i>Ratified 27/05/1971</i>	–		
Lithuania	<i>Ratified 26/09/1994</i>	X		
Luxembourg		X		
Madagascar		X		
Malawi		–		
Malaysia		X		
Maldives, Republic of		X		
Mali		X		
Malta	<i>Ratified 09/06/1988</i>	X		

Minimum wage systems

Members	Convention No. 131	Report received	Comments of employers' organizations	Comments of workers' organizations
Marshall Islands		–		
Mauritania		X		
Mauritius		X		X
Mexico	<i>Ratified 18/04/1973</i>	X	X	X
Moldova, Republic of	<i>Ratified 23/03/2000</i>	X		X
Mongolia		–		
Montenegro	<i>Ratified 03/06/2006</i>	X		
Morocco	<i>Ratified 16/05/2013</i>	X		
Mozambique		X	X	X
Myanmar		X		
Namibia		X		
Nepal	<i>Ratified 19/09/1974</i>	–		
Netherlands	<i>Ratified 10/10/1973</i>	X		
New Zealand		X	X	X
Nicaragua	<i>Ratified 01/03/1976</i>	X		
Niger	<i>Ratified 24/04/1980</i>	X		X
Nigeria		–		
Norway		X	X	X
Oman		X	X	
Pakistan		X		
Palau		–		
Panama		X		
Papua New Guinea		–		
Paraguay		–		
Peru		X		X
Philippines		X		X
Poland		X		X
Portugal	<i>Ratified 24/02/1983</i>	X	X	X
Qatar		X		
Romania	<i>Ratified 28/10/1975</i>	X		X
Russian Federation		X		
Rwanda		–		
Saint Kitts and Nevis		–		
Saint Lucia		–		
Saint Vincent and the Grenadines		X		
Samoa		X		
San Marino		–		
Sao Tome and Principe		–		

List of ratifications of Convention No. 131 and reports received
in accordance with article 19 of the ILO Constitution

Members	Convention No. 131	Report received	Comments of employers' organizations	Comments of workers' organizations
Saudi Arabia		X		
Senegal		X		
Serbia	<i>Ratified 24/11/2000</i>	X	X	
Seychelles		X	X	X
Sierra Leone		–		
Singapore		X		
Slovakia		X		
Slovenia	<i>Ratified 29/05/1992</i>	X		X
Solomon Islands		–		
Somalia		–		
South Africa		X		
South Sudan		–		
Spain	<i>Ratified 30/11/1971</i>	X	X	X
Sri Lanka	<i>Ratified 17/03/1975</i>	X	X	
Sudan		–		
Suriname		X		
Swaziland	<i>Ratified 05/06/1981</i>	–		
Sweden		X		X
Switzerland		X		X
Syrian Arab Republic	<i>Ratified 18/04/1972</i>	–		
Tajikistan		–		
Tanzania, United Republic of	<i>Ratified 30/05/1983</i>	–		
Thailand		X		
The former Yugoslav Republic of Macedonia	<i>Ratified 17/11/1991</i>	X		
Timor-Leste		X		
Togo		X		
Trinidad and Tobago		X		
Tunisia		X		
Turkey		X	X	X
Turkmenistan		–		
Tuvalu		–		
Uganda		–		X
Ukraine	<i>Ratified 01/03/2006</i>	X		
United Arab Emirates		–		
United Kingdom		X		X
United States		X		
Uruguay	<i>Ratified 02/06/1977</i>	X	X	

Minimum wage systems

Members	Convention No. 131	Report received	Comments of employers' organizations	Comments of workers' organizations
Uzbekistan		X		
Vanuatu		-		
Venezuela, Bolivarian Republic of		X	X	X
Viet Nam		X		
Yemen	<i>Ratified 29/07/1976</i>	-		X
Zambia	<i>Ratified 20/06/1972</i>	-	X	
Zimbabwe		X		

Appendix III

List of employers' and workers' organizations having submitted observations concerning the instruments under examination

Employers' organizations

International Organisation of Employers (IOE)

Algeria

- General Confederation of Algerian Enterprises (CGEA)

Antigua and Barbuda

- Antigua & Barbuda Employers' Federation (ABEF)

Armenia

- Republican Union of Employers of Armenia (RUEA)

Austria

- Austrian Federal Economic Chamber (WKÖ)
- Federation of Austrian Industries (IV)

Bangladesh

- Bangladesh Employers' Federation (BEF)

Botswana

- Confederation of Commerce, Industry and Manpower (BOCCIM)

Brazil

- National Confederation of Industry (CNI)

Bulgaria

- Bulgarian Chamber of Commerce and Industry (BCCI)

Colombia

- National Employers' Association of Colombia (ANDI)

Côte d'Ivoire

- General Confederation of Enterprises of Côte d'Ivoire (CGECI)

Cyprus

- Cyprus Employers' & Industrialists' Federation (OEB)

Democratic Republic of the Congo

- Federation of Enterprises of the Congo (FEC)

Denmark

- Confederation of Danish Employers (DA)

Finland

- Commission for Local Authority Employers (KT)

Germany

- Confederation of German Employers' Associations (BDA)

Indonesia

- Indonesian Chamber of Commerce and Industry (APINDO)

Italy

- Italian Confederation of Small and Medium Private Enterprises (CONFAPI)

Jordan

- Jordan Chamber of Industry

Kenya

- Federation of Kenya Employers (FKE)

Mexico

- Confederation of Industrial Chambers of the United States of Mexico (CONCHAMIN)

Mozambique

- Business Associations Confederation of Mozambique (CTA)

New Zealand

- Business New Zealand

Norway

- Confederation of Norwegian Business and Industry (NHO)

Portugal

- Confederation of Farmers of Portugal (CAP)
- Confederation of Portuguese Industry (CIP)
- Confederation of Portuguese Tourism (CTP)

Serbia

- Union of Employers of Serbia

Seychelles

- Association of Seychelles Employers

Spain

- Spanish Confederation of Employers' Organizations (CEOE)

Sri Lanka

- Employers' Federation of Ceylon (EFC)

Turkey

- Turkish Confederation of Employers' Associations (TİSK)

Uruguay

- Chamber of Industries of Uruguay (CIU)
- National Chamber of Commerce and Services of Uruguay (CNCS)

Venezuela, Bolivarian Republic of

- Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS)

Zambia

- Zambia Federation of Employers (ZFE)

Workers' organizations

International Trade Union Confederation (ITUC)

Argentina

- Confederation of Workers of Argentina (CTA)
- General Confederation of Labour (CGT)
- Municipal Workers Confederation of the Argentine Republic (CTM)

Australia

- Australian Council of Trade Unions (ACTU)

Austria

- Federal Chamber of Labour (BAK)

Bahrain

- General Federation of Bahrain Trade Unions (GFBTU)

Belgium

- Confederation of Christian Trade Unions (CSC)
- General Confederation of Liberal Trade Unions of Belgium (CGSLB)
- General Labour Federation of Belgium (FGTB)

Bulgaria

- Confederation of Independent Trade Unions in Bulgaria (KNSB/CITUB)

China – Hong Kong Special Administrative Region

- Hong Kong Confederation of Trade Unions (HKCTU)

Colombia

- Confederation of Workers of Colombia (CTC)
- National Association of Civil Servants and Employees in the Judicial Branch (Asonal-Judicial)
- National Union of Public Servants of State Social Enterprises (SINALTRAESES)
- Public Services International – Colombia (PSI)
- Single Federation of Mining and Energy Workers (FUNTRAENERGETICA)
- Workers' Union of the Tobacco Industry (SINTRAITABACO)

Czech Republic

- Czech–Moravian Confederation of Trade Unions (CM KOS)

Germany

- German Confederation of Trade Unions (DGB)

Hungary

- Democratic League of Independent Trade Unions (LIGA)

Indonesia

- Confederation of Indonesian Prosperity Trade Union (KSBSI)

Ireland

- Irish Congress of Trade Unions (ICTU)

Japan

- Japanese Trade Union Confederation (JTUC–RENGO)

Jordan

- Jordanian Federation of Independent Trade Unions (FITU)
- The General Federation of Jordanian Trade Unions

Korea, Republic of

- Korean Confederation of Trade Unions (KCTU)

Lebanon

- National Federation of Trade Unions of Workers and Employees of Lebanon (FENASOL)

Mauritius

- Confederation of Private Sector Workers (CTSP)

Mexico

- Revolutionary Confederation of Workers and Peasants (CROC)

Moldova, Republic of

- National Confederation of Trade Unions of Moldova (CNSM)

Mozambique

- National Confederation of Independent and Free Trade Unions of Mozambique (CONSILMO)
- Workers' Organization of Mozambique (OTM)

New Zealand

- New Zealand Council of Trade Unions (NZCTU)

Niger

- Confederation of Labour of Niger (CNT)
- Union of Workers' Trade Unions of Niger (USTN)

Norway

- Norwegian Confederation of Trade Unions (LO)

Peru

- Autonomous Workers' Confederation of Peru (CATP)
- Single Confederation of Workers of Peru (CUT)

Philippines

- Trade Union Congress of the Philippines (TUCP)

Poland

- Independent and Self-Governing Trade Union "Solidarnosc"

Portugal

- General Confederation of Portuguese Workers – National Trade Unions (CGTP-IN)
- General Workers' Union (UGT)

Romania

- National Trade Union Confederation "Meridian"

Seychelles

- Seychelles Federation of Workers' Unions (SFWU)

Slovenia

- Association of Free Trade Unions of Slovenia (AFTUS)

Spain

- General Union of Workers (UGT)
- Trade Union Confederation of Workers' Commissions (CC.OO.)

Sweden

- Swedish Confederation for Professional Employees (TCO)
- Swedish Confederation of Professional Associations (SACO)
- Swedish Trade Union Confederation (LO)

Switzerland

- Swiss Federation of Trade Unions (USS/SGB)

Turkey

- Confederation of Turkish Trade Unions (TÜRK-İS)

Uganda

- National Organisation of Trade Unions (NOTU)

United Kingdom

- Trades Union Congress (TUC)

Venezuela, Bolivarian Republic of

- General Confederation of Labour (CGT)
- Single Union of Public Employees of the Carabobo State Government (SUEPGEC)

Yemen

- General Federation of Yemen Workers' Trade Unions (GFYWTU)

* Observations were also received from the Palestinian General Federation of Trade Unions (PGFTU).

Appendix IV

Relevant legislation and other provisions

Afghanistan

1. Legislative Decree No. 94 of 17 January 2007 on the Labour Act

Albania

1. Constitution of 1998
2. Act No. 7961 of 12 July 1995 on the Labour Code
3. Act No. 9634 of 30 October 2006 on labour inspection and the State Labour Inspectorate

Algeria

1. Act No. 90-11 of 21 April 1990 on labour relations
2. Act No. 81-07 of 27 June 1981 on apprenticeship
3. Decree No. 81-392 of 26 December 1981 implementing the provisions of Act No. 81-07 of 27 June 1981 on apprenticeship
4. Act No. 90-03 of 6 February 1990 on labour inspection

Antigua and Barbuda

1. Labour Code 1975 (No. 14) (c. 27)
2. Labour Commissioner Act 1951
3. Minimum Wage Order, 2008 (SI 2008 No. 2)

Argentina

1. Constitution of 1853, as amended in 1994
2. Act No. 20.744 of 11 September 1974 on employment contracts
3. Act No. 24.013 of 5 December 1991 on employment
4. Act No. 26.844 of 3 April 2013 on the special system of employment contracts for domestic workers
5. Act No. 26.727 of 21 December 2011 on agricultural work
6. Act No. 12.713 of 29 September 1941 on home work
7. Decree No. 118.755 of 29 April 1942 regulating the application of Act No. 12.713 of 29 September 1941 on home work
8. Act No. 25.877 of 18 March 2004 on the labour regime
9. Act No. 25.512 of 23 December 1999 ratifying the Federal Labour Pact

10. Act No. 25.013 of 22 September 1998 on labour reform
11. Act No. 26.427 of 18 December 2008 on the creation of vocational training courses within the framework of the national education system

Armenia

1. Constitution of 5 July 1995
2. Labour Code of 9 November 2004
3. Act of 16 March 2004 on social welfare, the minimum basket of goods and the minimum social welfare budget
4. Code on Administrative Offences of 6 December 1985
5. State Labour Inspection Act of 24 March 2005

Australia

Federal jurisdiction

1. Fair Work Act 2009
2. Fair Work Regulations, 2009
3. Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (No. 55)
4. Fair Work (Transitional Provisions and Consequential Amendments) Regulations, 2009
5. National Minimum Wage Order, 2013

State jurisdiction

South Australia

6. Fair Work Act 1994

Western Australia

7. Industrial Relations Act 1979

New South Wales

8. Industrial Relations Act 1996

Queensland

9. Industrial Relations Act 1999
10. Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012

Tasmania

11. Industrial Relations Act 1984

Austria

1. Collective Labour Relations Act (ArbVG) of 14 December 1973
2. Wage and Social Anti-Dumping Act (LSDB-G) of 28 April 2011
3. Act on home work (HeimArbG) of 1960
4. Agricultural Employment Act (LAG) of 1984
5. Act governing domestic help and domestic employees (HgHaG) of 1962
6. Labour Inspection Act (ArbIG) of 1993

Azerbaijan

1. Constitution of 12 November 1995
2. Labour Code of 1 February 1999
3. Code of Administrative Offences, approved by the Act of 11 July 2000
4. Presidential Order No. 1866 of 1 December 2011 setting the new minimum wage
5. Act No. 259-IVQ of 6 December 2011 on the living wage for 2012

Bahamas

1. Employment Act 2001
2. Minimum Wages Act 2001
3. Apprenticeship Act 1968 (c. 320)

Bahrain

1. Act No. 36 of 2012 promulgating the labour law in the private sector
2. Act No. 42 of 2010 raising the minimum wage of civil servants and military personnel

Bangladesh

1. Constitution of 1972
2. Labour Act 2006
3. Minimum Wages Board Act 2010
4. Agricultural Labour (Minimum Wages) Ordinance, 1984 (No. XVII)
5. Export Processing Zones Authority Act 1980 (No. XXXVI)
6. Export Processing Zones Workers Welfare Association and Industrial Relations Act 2010 (No. 43)

Barbados

1. Employment Rights Act 2012
2. Wages Council Act 1955 (c. 362)
3. Protection of Wages Act 1951
4. Domestic Employees Act 1961 (c. 344)
5. Sugar Workers (Minimum Wage and Guaranteed Employment) Act 1968 (c. 359)
6. Wages Council (Shops) Order, 1958
7. Wages Council (Wages Regulation) (Shop Assistants) Order, 2012
8. Domestic Employees (Rate of Pay and Hours of Duty) Order, 1982

Belarus

1. Constitution of 1994
2. Labour Code of 26 July 1999
3. Act No. 124-3 of 17 July 2002 on the establishment and procedure for increasing the level of the minimum wage
4. Act No. 239-3 of 6 January 1999 on the minimum subsistence income

5. Presidential Decree No. 136 of 11 April 2011 on the programme of social and economic development for 2011–15
6. Code of Administrative Offences of 21 April 2003

Belgium

1. Constitution of 17 February 1994
2. Act of 5 December 1968 on collective labour agreements and joint committees
3. Act of 12 April 1965 on the protection of workers' remuneration
4. Act of 26 July 1996 on the promotion of employment and protection of competitiveness
5. Anti-discrimination Act of 10 May 2007
6. Act of 10 May 2007 against discrimination between men and women
7. Act of 22 April 2012 aimed at tackling the wage gap between men and women
8. Act of 6 June 2010 establishing the Social Criminal Code
9. Collective Labour Agreement No. 43 of 2 May 1998 modifying and coordinating collective labour agreements No. 21 of 15 May 1975 and No. 23 of 25 July 1975 regarding a guaranteed minimum monthly wage
10. Collective Labour Agreement No. 50 of 29 October 1991 on a guaranteed minimum monthly wage for workers under 21 years of age
11. Royal Order of 29 June 1973 awarding guaranteed remuneration to certain officials of the federal public services
12. Act of 19 July 1983 on apprenticeship for occupations practised by salaried workers
13. Royal Order of 19 August 1998 fixing the maximum remuneration for apprentices whose contracts are governed by the Act of 19 July 1983 on apprenticeship for occupations practised by salaried workers
14. Collective Labour Agreement No. 99 of 20 February 2009 on the level of remuneration of disabled workers and replacing Collective Labour Agreement No. 26 of 15 October 1975 on the level of remuneration of disabled persons in mainstream employment
15. Act of 29 May 1952 on the National Labour Council
16. Social Penal Code of 6 June 2010

Belize

1. Labour Act (Cap. 297)
2. Wages Councils (Wages Regulation) (Amendment) Order (Statutory Instrument No. 79 of 2010)
3. Wages Regulations (Manual Workers) (Amendment) Order, 2010 (Statutory Instrument No. 80 of 2010)

Benin

1. Act No. 98-004 of 27 January 1998 establishing the Labour Code
2. General Collective Labour Agreement of 30 December 2005 applicable to enterprises in the private and semi-public sectors
3. Order No. 071/MTFP/DC/SGM/DGT/DRP/SP-CNT of 23 February 2011 upgrading the graduated minimum salaries in the private and semi-public sectors governed by the Labour Code

Bolivia, Plurinational State of

1. Constitution of 7 February 2009
2. General Labour Act of 8 December 1942
3. Supreme Decree No. 224 of 23 August 1943 regulating the General Labour Act
4. Act No. 2450 of 9 April 2003 on domestic workers
5. Decree No. 1549 of 10 April 2013 to increase salaries

Bosnia and Herzegovina**Federation of Bosnia and Herzegovina**

1. Labour Act of 1999
2. General Collective Agreement of 2005
3. Agreement on establishment of the Economic and Social Council, 2002
4. Decision fixing the minimum hourly wage 2008

Republika Srpska

5. Labour Act of 2007
6. General Collective Agreement of 2010

Botswana

1. Employment Act (Cap. 47:01)
2. Employment (Exhibition of Minister's Notices in Connection with Minimum Wages) Regulations (Statutory Instrument No. 152 of 1984)

Brazil

1. Constitution of 5 October 1988
2. Consolidation of labour laws, Legislative Decree No. 5452 of 1 May 1943
3. Act No. 8.542 of 23 December 1992 on national wage policy
4. Decree of 20 April 2005 establishing, within the Ministry of Labour and Employment, a quadripartite commission to strengthen the minimum wage
5. Act No. 12.382 of 25 February 2011 fixing the minimum wage for 2011 and the policy for its long-term increase
6. Decree No. 7.655 of 23 December 2011 implementing Act No. 12.382 of 25 February 2011 fixing the minimum wage for 2011 and the policy for its long-term increase
7. Supplementary Law No. 103 of 14 July 2000

Bulgaria

1. Constitution of 1991
2. Labour Code of 1986
3. Labour Inspection Act 2008

Burkina Faso

1. Act No. 028-2008/AN of 13 May 2008 on the Labour Code
2. Decree No. 97-101/PRES/PM/METSS/MEF of 12 March 1997 on the composition, powers and operation of the Labour Advisory Committee
3. Decree No. 2010-809/PRES/PM/MTSS/MEF/MFPRE of 31 December 2010 on the establishment, composition, powers and operation of a national committee on the interoccupational guaranteed minimum wage
4. Statutory Order No. 2008-012/MTSS/SG/DGT/DRPPDS of 28 May 2008 on the establishment, composition, powers and operation of the Joint Mixed Commission on Private Sector Wage Negotiations
5. Decree No. 2006-655/PRES/PM/MTSS/MFB of 29 December 2006 fixing interoccupational guaranteed minimum wages
6. Decree No. 2008-739/PRES/PM/MTSS/MCPEA/MEF of 17 November 2008 increasing the wages of workers governed by the Labour Code
7. Decree No. 2000-301/PRES/PM/METSS of 30 June 2000 modifying the minimum wages by occupational category for branches of work not governed by collective agreements
8. Memorandum of Understanding of 11 April 2012 reached by the Joint Mixed Commission on Private Sector Wage Negotiations

Burundi

1. Labour Code of 1993
2. Ministerial Ordinance No. 650/11/88 of 30 April 1988 fixing the guaranteed interoccupational minimum wage (SMIG) in the formal sector of the national economy

Cabo Verde

1. Constitution
2. Legislative Decree No. 5/2007 enacting the Labour Code

Cambodia

1. Labour Law of 1 January 1997
2. Proclamation (*prakas*) No. 47 of 2006 on the composition and operation of the Advisory Commission on Labour
3. Notification No. 049/10 on the minimum wage in the textile, garment and shoe-sewing industries 2010

Cameroon

1. Act No. 92/007 of 14 August 1992 on the Labour Code
2. Decree No. 93/084/PM of 26 January 1993 establishing the organization and operation of the National Labour Consultative Commission
3. Statutory Order No. 0021/MINTSS/SG/DRP/SDCS of 30 June 2008 establishing the field of application of the interoccupational guaranteed minimum wage
4. Decree No. 95/099/PM of 15 February 1995 fixing the interoccupational guaranteed minimum wage
5. Decree No. 2008/2115/PM of 24 June 2008 increasing the interoccupational guaranteed minimum wage

Canada

Federal jurisdiction

1. Labour Code 1985

Provinces and territories

Alberta

2. Employment Standards Code 2000
3. Employment Standards Regulation, 14/1997

British Columbia

4. Employment Standards Act 1996
5. Employment Standards Regulation, 396/05

Prince Edward Island

6. Employment Standards Act 1988

Manitoba

7. Employment Standards Code 1998
8. Employment Standards Regulation, 6/2007
9. Construction Industry Wages Act 2006
10. Construction Industry Minimum Wage Regulation, 119/2006
11. Apprenticeship and Certification Act 2009

New Brunswick

12. Employment Standards Act 1982
13. Minimum Wage Regulation, 2011-54
14. Apprenticeship and Occupational Certification Act 2012
15. General Regulation – Apprenticeship and Occupational Certification Act, 97-125

Nova Scotia

16. Labour Standards Code 1989
17. General Labour Standards Code Regulations, 298/90
18. General Minimum Wage Order

Nunavut

19. Labour Standards Act 1988

Ontario

20. Employment Standards Act 2000
21. Regulation 285/01 – Exemptions, special rules and establishment of minimum wage

Quebec

22. Act respecting labour standards
23. Regulation respecting labour standards
24. Regulation respecting labour standards specific to certain sectors of the clothing industry

Saskatchewan

25. Employment Act 2013

Newfoundland and Labrador

26. Labour Standards Act 1990
27. Labour Standards Regulations, 781/96

North-West Territories

28. Employment Standards Act 2007
29. Employment Standards Regulations, 2008

Yukon

30. Employment Standards Act 2002

Central African Republic

1. Act No. 09.004 of 29 January 2009 on the Labour Code
2. Order No. 04.015 of 1 February 2004 establishing a Permanent National Labour Council
3. Decree No. 07.177 of 18 June 2007 on the organization and operation of the Permanent National Labour Council

Chad

1. Constitution of 1996
2. Act No. 38/PR/96 of 11 December 1996 enacting the Labour Code
3. General collective agreement applicable to workers 2007
4. Decree No. 055/PR/PM/MFPT/2011 of 21 January 2011 increasing the interoccupational guaranteed minimum wage and the agricultural guaranteed minimum wage

Chile

1. Supreme Decree No. 1150 of 21 October 1980 approving the political Constitution
2. Decree-Law No. 1 of 31 July 2002 establishing the consolidated, coordinated and systematized text of the Labour Code
3. Act No.18600 of 19 February 1987 on mentally disabled persons
4. Act No. 20689 of 24 August 2013 readjusting the amount of the minimum monthly wage

China

1. Labour Law of 5 July 1994
2. Regulations on minimum wages, Order of the Minister of Labour and Social Security No. 21, 20 January 2004

Hong Kong Special Administrative Region

1. Employment Ordinance, 1968
2. Minimum Wage Ordinance, 2010

Colombia

1. Constitution of 1991
2. Substantive Labour Code of 8 May 1950
3. Law No. 278 of 30 April 1996 regulating the composition and operation of the Permanent Commission on the Harmonization of Wage and Labour Policies established under article 56 of the Constitution
4. Law No. 789 of 27 December 2002 laying down standards to support employment and strengthen social protection and modifying certain provisions of the Labour Code
5. Decree No. 933 of 11 April 2003 regulating the apprenticeship contract
6. Decree No. 2738 of 2012 fixing the national minimum wage

Costa Rica

1. Constitution of 1949
2. Act No. 2 of 27 August 1943 promulgating the Labour Code
3. Legislative Decree No. 832 of 8 November 1949 concerning minimum wages
4. Decree No. 25619-MTSS of 28 November 1996 regulating the National Wages Council
5. Methodology for fixing minimum wages for the private sector, adopted by the National Wages Council on 27 October 2011
6. Act No. 4903 of 17 November 1971 on apprenticeship
7. Executive Decree No. 35730-MTSS of 14 January 2010 establishing the Public Sector Wages Negotiation Commission
8. Executive Decree No. 37784-MTSS of 26 June 2013 on fixing minimum wages for the private sector
9. Decree No. 28578-MTSS of 3 February 2000 establishing regulations on the organization of the labour inspection services

Côte d'Ivoire

1. Act No. 95-15 of 12 January 1995 on the Labour Code
2. Interoccupational collective agreement of 19 July 1977
3. Decree No. 65-131 of 2 April 1965 laying down the powers, organization and operation of the Consultative Labour Commission

Croatia

1. Labour Act of 4 December 2009
2. Act of 27 March 2013 on the minimum wage
3. State Inspectorate Act of 2 October 2008

Cuba

1. Act No. 49 of 28 December 1984 on the Labour Code
2. Resolution No. 27/06 of 12 January 2006 on wage organization
3. Decree-Law No. 246 of 29 May 2007 on violations of labour legislation
4. Resolution No. 11/2005 of 23 April 2005 on wage increases

5. Resolution No. 30/05 of 25 November 2005 establishing a single wage scale for the various occupational categories of workers
6. Resolution No. 22/04 of 30 June 2004 on working conditions of disabled workers

Cyprus

1. Constitution
2. Minimum Wage Act 1941 (c. 183)
3. Minimum Wage (shop assistants, assistant nurses, security guards, cleaners) Order 2012

Czech Republic

1. Resolution of the Presidium of the Czech National Council of 16 December 1992 on the declaration of the Charter of Fundamental Rights and Basic Freedoms as a part of the constitutional order
2. Labour Code, Act No. 262/2006 of 21 April 2006
3. Statutes of the Council of Economic and Social Agreement, 1997
4. Ordinance No. 567/2006 on minimum salary, minimum level of guaranteed salary, determination of hazardous work environments, and salary supplement for work in hazardous work environments
5. Labour Inspection Act No. 251/2005 of 3 May 2005

Democratic Republic of the Congo

1. Act No. 015/2002 of 16 October 2002 issuing the Labour Code
2. Decree No. 08/040 of 30 April 2008 fixing the inter-professional guaranteed minimum wage, the minimum family allowance, and accommodation allowance

Dominican Republic

1. Labour Code of 1992

Ecuador

1. Constitution of 20 October 2008
2. Labour Code of 30 June 1978
3. Act No. 100 of 3 January 2003 on the Childhood and Adolescence Code
4. Ministerial Agreement No. 059 of 30 May 2000 regulating the operation of the National Wage Council (CONADES) and its sectoral commissions
5. Ministerial Agreement No. 00117 of 7 July 2010 consolidating branches of activity in 22 sectoral commissions
6. Ministerial Agreement No. 0215 of 26 December 2012 fixing the unified basic wage for 2013
7. Ministerial Agreement No. 0216 of 26 December 2012 fixing the sectoral minimum wages for 2013

Egypt

1. Labour Law No. 12 of 2003
2. Decree No. 983 of 2003 concerning the establishment of a National Council for Wages

El Salvador

1. Constitution of 15 December 1983
2. Decree No. 15 of 31 July 1972 promulgating the Labour Code
3. Decree No. 103 of 1 July 2013 on the minimum wage for agricultural workers
4. Decree No. 104 of 1 July 2013 on the minimum wage for workers in commerce and services, industry, and the textile and clothing sector (*maquilas*)
5. Decree No. 105 of 1 July 2013 on the minimum wage for workers in coffee, cotton and sugar cane harvesting
6. Decree No. 106 of 1 July 2013 on the minimum wage for seasonal agricultural workers

Eritrea

1. Labour Proclamation No. 118/2001

Estonia

1. Act of 17 December 2008 on employment contracts
2. Substitutive Enforcement and Penalty Payment Act of 9 May 2001
3. Regulation No. 26 of the Minister of Social Affairs of 17 October 2007 on the Statutes of the Labour Inspectorate

Ethiopia

1. Labour Proclamation No. 377/2003
2. Civil Code of 5 May 1960

Finland

1. Employment Contracts Act No. 55/2001
2. Collective Agreements Act No. 436/1946
3. Act No. 56/2001 on confirmation of the general applicability of collective agreements
4. Act No. 951/1977 on the employment of household workers

France

1. Labour Code (Act No. 2008-67 of 21 January 2008 ratifying Order No. 2007-329 of 12 March 2007 on the Labour Code (legislative part), Decree No. 2008-243 of 7 March 2008 on certain regulatory provisions of the Labour Code, and Decree No. 2008-244 of 7 March 2008 on the Labour Code (regulatory part))
2. Act No. 2008-1258 of 3 December 2008 on earned income
3. Decree No. 2009-552 of 19 May 2009 on the Expert Group on the minimum growth wage provided for by article 24 of Act No. 2008-1258 of 3 December 2008 on earned income
4. Decree No. 2013-123 of 7 February 2013 on modalities for increasing the minimum growth wage rate
5. National Collective Agreement of Employees of Individual Employers of 24 November 1999 (extended by Decree of 2 March 2000)

Gabon

1. Labour Code, Act No. 3/94 of 21 November 1994
2. Decree No. 000642/PR/MTEFP of 23 June 1997 establishing the composition of the National Wage Committee
3. Decree No. 000855/PR/MTE of 9 November 2006 fixing the interoccupational minimum guaranteed wage
4. Decree No. 0127/PR/MTEPS/MBCFPRE of 23 April 2010 fixing the amount of the minimum monthly income
5. Decree No. 0128/PR/MTEPS/MBCFPRE of 23 April 2010 instituting a solidarity allowance
6. Decree No. 01378/77/PR/MTSS of 24 December 1977 determining the conditions of employment and fixing the classifications and wages of domestic and workers

Gambia

1. Labour Act 2007

Georgia

1. Constitution of 24 August 1995
2. Labour Code, Act No. 4113 of 17 December 2010
3. Presidential Decree No. 351 of 4 June 1999 on the amount of the minimum wage
4. Presidential Decree No. 661 of 24 November 2007 on regulation of salaries in the public sector

Germany

1. Collective Agreements Act (TVG) of 25 August 1969
2. Act of 11 January 1952 to establish minimum working conditions (MiArbG)
3. Act of 20 April 2009 on posted workers (AEntG)
4. Act on part-time and temporary work (TzBfG)
5. Home Work Act (HAG) of 14 March 1951

Greece

1. Act No. 4046/2012 of 31 January 2012
2. Act No. 4093/2012 of 31 January 2012
3. Omnibus Act of 19 July 2013

Grenada

1. Employment Act (Act No. 14 of 1999)

Guatemala

1. Constitution (reformed by Legislative Agreement No. 18-93 of 17 November 1983)
2. Decree No. 1441 of 5 May 1961 promulgating the Labour Code
3. Government Agreement No. 1319 of 9 April 1968 regulating the National Wage Commission and joint minimum wage commissions
4. Government Agreement No. 359-2012 of 23 December 2012

Guinea-Bissau

1. General Labour Act (Act No. 2/86 of 5 April 1986)

Guyana

1. Labour Act 1942 (No. 2) (c 98:01)
2. Wages Councils Act 1956 (No. 51)
3. Labour (Conditions of Employment of Certain Workers) Act 1978, (No. 19) (c. 99.03)

Honduras

1. Constitution of 1982
2. Decree No. 189 of 1 June 1959 promulgating the Labour Code
3. Minimum Wage Act of 20 January 1971
4. Decree No. 73/96 of 5 September 1996 on the Code on Childhood and Adolescence
5. Agreement of 11 January 2012 on protection, stability of employment and strengthening of workers and employers in the *maquila* (contract manufacturing) sector
6. Agreement No. STSS-001-2012 of 12 January 2012 on fixing the minimum wage for 2012 and 2013
7. Agreement No. 001-STSS-07 of 31 December 2007 on regionalized minimum wage

Hungary

1. Act No. I of 2012 enacting the Labour Code
2. National Economic and Social Council Act (XCIII/2011)
3. Simplified Employment Act (LXXV/2010)
4. Labour Inspection Act (LXXV/1996)
5. Public Works Legislation (Amendment) Act (CVI/2011)
6. Decree No. 170/2011 (VIII.24) on wage fixing and the guaranteed wage in public works employment
7. Government Regulation No. 390/2012 of 20 December 2012 fixing the minimum wage and the guaranteed minimum wage

Iceland

1. Act No. 80/1938 on trade unions and industrial disputes
2. Act No. 55/1980 on working terms and pension rights insurance
3. Act No. 42/2010 on workplace identity cards and workplace inspection

India

1. Minimum Wages Act 1948
2. Minimum Wages (Central) Rules, 1950
3. Payment of Wages Act 1936
4. Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provision Act 1955

Indonesia

1. Constitution of 1945
2. Act No. 13 of 25 March 2003 concerning manpower
3. Minimum Wages Regulation of the Minister of Manpower and Transmigration No. Per-01/Men/1999
4. Decision of the President of the Republic of Indonesia concerning the Wage Council, No. 107 dated 18 October 2004
5. Regulation No. 13/2012 of the Minister of Manpower and Transmigration on components and implementation of stages to achieve standard of living
6. Decision of the Minister of Manpower and Transmigration concerning procedures for postponing the application of the Minimum Wage, No. Kep. 231/Men/2003

Iran, Islamic Republic of

1. Labour Code of 20 November 1990

Iraq

1. Act No. 71 of 27 July 1987 promulgating the Labour Code

Ireland

1. National Minimum Wage Act No. 5 of 2000
2. Industrial Relations Act of 1946

Israel

1. Minimum Wage Act 1987
2. Minimum Wage Act 2011 (increase in the amount of the minimum wage – temporary provisions)
3. Apprenticeship Act 1953
4. Penal Law 1977
5. Act to strengthen enforcement of labour law 2011
6. Minimum Wages Regulation (Wages adapted to employees with disability with a diminished working ability), 2002

Italy

1. Constitution of 1947
2. Civil Code, 1942
3. Legislative Decree No. 276 of 10 September 2003 delegating to the Government powers in the fields of employment and the labour market, under Act No. 30 of 14 February 2003
4. Inter-confederations agreement of 15 April 2009 to implement the framework agreement on reform of the organization of collective bargaining
5. Inter-confederations agreement of 28 June 2011

Jamaica

1. Minimum Wage Act 1938
2. Labour Officers (Powers) Act 1943
3. National Minimum Wage Order, 1975
4. Minimum Wage (Industrial Security Guards) Order, 1982
5. Minimum Wage (Garment-Making Trade) Order, 1974

Japan

1. Constitution of 3 November 1946
2. Labour Standards Act No. 49 of 7 April 1947
3. Minimum Wages Act No. 137 of 15 April 1959
4. Minimum Wages Councils Order of 4 May 1959
5. Order of 10 July 1959 promulgating the Minimum Wages Act
6. Act No. 60 of 16 May 1970 on industrial home work
7. Order of 30 September 1970 promulgating the Act on industrial home work

Jordan

1. Labour Code (Act No. 8 of 1996)
2. Decision of 31 December 2011 of the Tripartite Committee for Labour Affairs concerning minimum wage
3. Regulation No. 56 of 1996 on labour inspectors

Kazakhstan

1. Constitution of 30 August 1995
2. Labour Code (No. 251 of 15 May 2007)
3. Act No. 496-IV of 24 November 2011 on the budget 2012–14

Kenya

1. Constitution of 2010
2. Labour Institutions Act 2007 (No. 12)
3. Labour Relations Act 2007 (No. 14)
4. Salaries and Remuneration Commission Act 2001

Kiribati

1. Employment (Amendment) Act 2008 (Act No. 2 of 2008)
2. Employment Ordinance (Cap. 30)

Korea, Republic of

1. Constitution of 1948
2. Labour Standards Act No. 5309 of 13 March 1997
3. Minimum Wage Act No. 3927 of 31 December 1986
4. Presidential Decree No. 12207 of 1 July 1987 enforcing the Minimum Wage Act

Kuwait

1. Private Sector Labour Law, Act No. 6 of 2010

Kyrgyzstan

1. Labour Code (Act No. 107 of 4 August 2004)
2. Act No. 210 of 13 October 2008 on the minimum wage
3. Act No. 41 of 17 April 2012 on the national budget for 2012 and estimates for 2013–14
4. Act No. 170 of 26 May 2009 on state guarantees for minimum social standards
5. Act No. 115 of 1 October 1998 promulgating the Code of Administrative Responsibility
6. Act No. 72 of 25 May 2007 on the procedure for conducting inspections of businesses

Lao People's Democratic Republic

1. Labour Law 2006 (No. 06/NA)

Latvia

1. Constitution of 15 February 1922
2. Labour Law of 20 June 2001
3. Regulations of 30 October 1998 on the National Tripartite Cooperation Council
4. Ministerial Order No. 111 of 16 March 2011 on fixing the minimum monthly wage for the coming years
5. Ministerial Regulation No. 390 of 17 May 2011 on the procedure for fixing and adjusting the minimum monthly wage
6. Administrative Violations Code of 25 August 1985
7. Cabinet Regulation No. 1096 of 30 November 2010 on fixing the minimum wage and the minimum hourly wage

Lebanon

1. Labour Code of 23 September 1946
2. Act No. 36/67 of 16 May 1967 fixing the minimum wage for employees and workers and the allowance for the higher cost of living
3. Decree No. 4206 of 8 August 1981 establishing the Commission on the Cost of Living Index

Lesotho

1. Labour Code Order, 1992 (Order No. 24 of 1992)

Libya

1. Labour Relations Act 2010

Lithuania

1. Constitution of 1992
2. Labour Code, No. XI-1219 of 4 June 2002
3. Act No. I-614 of 25 October 1994 on the State Labour Inspectorate
4. Administrative Offences Code No. 1-1, 1985
5. Resolution No. 718 of 20 June 2012 on increasing the minimum wage

Luxembourg

1. Act of 31 July 2006 to establish a Labour Code
2. Act of 22 June 1963 laying down the system for civil servants' salaries

Madagascar

1. Constitution of 11 December 2010
2. Act No. 2003-044 of 28 July 2004 on the Labour Code
3. Act No. 99-028 of 3 February 2000 recasting the Maritime Code
4. Decree No. 2005-329 of 31 May 2005 repealing Decree No. 97-1149 of 18 September 1997 and establishing a National Labour Council
5. Decree No. 2013-476 on fixing the indexes and the starting and seniority minimum wages by occupational category

Malawi

1. Employment Act 1999 (No. 6 of 2000) (Cap. 55:02)

Malaysia

1. Employment Act 1955 (No. 265)
2. Labour Ordinance, Sabah (c. 67)
3. Labour Ordinance, Sarawak (c. 76)
4. National Wages Consultative Council Act 2011 (No. 732)
5. Minimum Wages Order, 2012
6. Minimum Wages (Amendment) Order, 2012
7. Minimum Wages (Amendment) Order, 2013

Maldives, Republic of

1. Employment Act, 2008 (Act No. 2/2008)

Mali

1. Act No. 92-020 of 23 September 1992 promulgating the Labour Code
2. Decree No. 96-178/P-RM of 13 June 1996 implementing various provisions of Act No. 92-020 promulgating the Labour Code

Malta

1. Constitution of 21 September 1964
2. Employment and Industrial Relations Act, 27 December 2002
3. National Minimum Wage Standard Order, 1992
4. Wage Increase National Standard Order, 1989 (Notice No. 169)

Mauritania

1. Act No. 2004-017 of 6 July 2004 to establish a Labour Code
2. Decree No. 2011-237 of 24 October 2011 increasing the interoccupational guaranteed minimum wage

Mauritius

1. Employment Relations Act 2008
2. Employment Rights Act 2008
3. Sugar Industry (Agricultural Workers) (Remuneration Order) (Amendment) Regulations, 2012

Mexico

1. Constitution of 5 February 1917
2. Federal Labour Act, 1 April 1970
3. General Regulation on inspection and sanctions for violations of labour laws of 6 July 1998
4. Resolution of the National Minimum Wages Commission of 18 December 2012 setting minimum wages from 1 January 2013

Moldova, Republic of

1. Labour Code, Act No. 154-XV of 28 March 2003
2. Act No. 847-XV of 14 January 2002 on wages
3. Act No. 1432 of 28 December 2000 on setting and review of the minimum wage
4. Act No. 140-XV of 10 May 2001 on labour inspection
5. Contravention Code, Act No. 218-XVI of 24 October 2008

Montenegro

1. Constitution of 2007
2. Labour Law, 2008
3. Law on the Social Council, 2007

Morocco

1. *Dahir* No. 1-03-194 of 11 September 2003 implementing Law No. 65-99 on the Labour Code
2. *Dahir* No. 1-00-206 of 19 May 2000 implementing Act No. 12-00 on the organization of apprenticeships
3. Decree No. 2-08-374 of 9 July 2008 implementing section 356 of Law No. 65-99 on the Labour Code

Mozambique

1. Constitution
2. Labour Law No. 23 of 1 August 2007
3. Ministerial Decree No. 161 of 31 December 2007
4. Decree No. 58 of 8 September 1999

Namibia

1. Labour Act 2007

Nepal

1. Labour Act 1992
2. Labour Rules, 1993
3. Civil Service Act 1993
4. Professional Journalists Act 1993

Netherlands

1. Minimum Wage and Minimum Leave Allowance Act of 27 November 1968
2. Ministry of Social Affairs and Employment Regulation of 11 August 2010 laying down policy for implementing the Minimum Wage and Minimum Leave Allowance Act
3. Decree of 29 June 1983 on setting the minimum wage for young workers

New Zealand

1. Employment Relations Act 2000
2. Minimum Wage Act 1983
3. Minimum Wage Order (No. 2) 2013

Nicaragua

1. Constitution of 9 January 1987
2. Act No. 185 of 30 October 1996 promulgating the Labour Code
3. Act No. 625 of 15 June 2007 on the minimum wage
4. General Law on Labour Inspection, Act No. 664 of 26 June 2008
5. Act No. 763 of 28 July 2011 on the rights of disabled persons
6. Ministerial Agreement JCHG-04-08-12 of 31 August 2012 on minimum wages approved by the National Commission on Minimum Wages
7. Ministerial Agreement JCHG-03-05-2012 of 3 May 2012 on the new wages applicable in the construction sector

Niger

1. Constitution of 25 November 2010
2. Act No. 2012-45 of 25 September 2012 on the Labour Code

Nigeria

1. Constitution (No 24 of 1999)
2. Labour Act (Chapter 198) (No. 21)
3. National Minimum Wage Act 1981 (No. 6 of 1981)

Norway

1. Act (No. 58 of 4 June 1993) relating to general application of wage agreements

Oman

1. Royal Decree No. 35/2003 of 26 April 2003 issuing the Labour Law

Pakistan

1. Industrial Relations Act 2008
2. Minimum Wages Ordinance, 1961
3. Minimum Wages for Unskilled Workers Ordinance, 1969
4. Newspaper Employees (Conditions of Service) Act 1973
5. Apprenticeship Rules, 1966

Panama

1. Constitution
2. Ministerial Decree No. 252 of 30 December 1971 promulgating the Labour Code
3. Ministry of Labour Executive Decree No. 240 of 28 December 2011 establishing the new nationwide minimum wage rates
4. Executive Decree No. 176 of 18 October 2011 on the appointment of members of the National Minimum Wage Commission

Paraguay

1. Constitution of 1992
2. Labour Code (Act No. 213 of 29 October 1993)

Peru

1. Constitution
2. Act No. 29381 of 2 June 2009 on the organization and functions of the Ministry of Labour and Employment Promotion
3. Supreme Decree No. 004-2010-TR of 1 April 2010 regulating the organization and functions of the Ministry of Labour and Employment Promotion
4. Supreme Decree No. 001-2005-TR of 14 April 2005 internally regulating the organization and functions of the National Council for Labour and Employment Promotion
5. Act No. 27986 of 2 June 2003 on domestic workers
6. Act No. 27337 of 21 July 2000 issuing the new Code of Children and Adolescents
7. Act No. 27360 of 30 October 2000 approving standards for promotion of the agricultural sector
8. Act No. 25101 of 1 October 1989 fixing the minimum wage for professional journalists
9. Supreme Decree 030-89-TR of 2 September 1989 on the minimum wage in the mining sector
10. General Act No. 28806 of 22 July 2006 on labour inspection
11. Act No. 29981 of 19 December 2012 establishing a national office for supervision and oversight of the application of labour legislation (SUNAFIL) and modifying General Act No. 28806 on labour inspection and Organic Act No. 278767 on regional governments
12. Act No. 29497 of 13 January 2010 on the new Code of Labour Procedure
13. Supreme Decree No. 007-2012-TR of 16 May 2012 increasing, from 1 June 2012, the minimum wage of workers in the private sector

Philippines

1. Constitution
2. Presidential Decree No. 442, Labor Code (1974)
3. Omnibus Rules to implement the Labor Code
4. Republic Act No. 6727, Wage Rationalization Act (1989)
5. Rules implementing Republic Act No. 6727
6. Republic Act No. 10361, Policy for the protection and welfare of domestic workers (2013)
7. Republic Act No. 9178, Barangay Micro Business Enterprises (BMBEs) Act (2002)
8. NWCP Guidelines No. 2, 2012, Implementation of the two-tiered wage system
9. NWPC Guidelines No. 1, 2007, Amended rules of procedure on minimum wage fixing
10. NWPC Guidelines No. 2, 2007, Amended rules on exemption from compliance with the prescribed wage increases/cost of living allowances granted by regional tripartite wages and productivity boards
11. NWCP Guidelines No. 1, 2003, Issuance of wage advisories for BMBEs
12. Department Order No. 115-11, 2011, Guidelines on implementation of the Incentivizing Compliance Program
13. Ministerial Order No. 115-A, 2012, Operational guidelines for issuing the tripartite certificate of compliance with labour legislation

Poland

1. Constitution of 2 April 1997
2. Labour Code of 26 June 1974 (consolidated 1997)
3. Minimum Wage Act, 10 October 2002
4. Act of 6 July 2001 on the Tripartite Commission for Socio-Economic Issues
5. Council of Ministers Resolution of 28 May 1996 on vocational training and remuneration of young people

Portugal

1. Constitution of 25 April 1976
2. Labour Code, Act No. 7/2009 of 12 February 2009
3. Act No. 108/91 of 17 August 1991, Economic and Social Council
4. Rules of Procedure of the Standing Committee for Social Concertation approved on 4 June 1993
5. Decree-Law No. 143/2010 of 31 December 2010 updating the amount of the guaranteed minimum wage for the year 2011

Romania

1. Constitution of 1991
2. Labour Code, Act No. 53/2003 of 25 January 2003 (republished in 2011)
3. Act No. 62/2011 concerning social dialogue

Russian Federation

1. Constitution of 1993
2. Labour Code (Federal Act No. 197-FZ of 31 December 2001)
3. Federal Act on the Minimum Wage (Federal Act No. 82-FZ of 7 June 2000)
4. Federal Act No. 92-FZ of 1 May 1999 on the Russian tripartite Commission for the Settlement of Social and Professional Relations
5. Code of Administrative Offences (Federal Act No. 95-FZ of 30 December 2001)

Saint Vincent and the Grenadines

1. Wages Councils Act 1953 (No. 1)
2. Wages Regulation (Agricultural Workers) Order, 2008
3. Wages Regulation (Domestic Workers) Order, 2008
4. Wages Regulation (Hotel Workers) Order, 2008
5. Wages Regulation (Industrial Workers) Order, 2008
6. Wages Regulation (Security Workers) Order, 2008
7. Wages Regulation (Workers in Offices of Professionals) Order, 2008
8. Wages Regulation (Shop Assistants) Order, 2008

Samoa

1. Labour and Employment Relations Act 2013
2. Minimum Wage Order, 2005

Sao Tome and Principe

1. Act No. 6/92 of 11 June 1992 establishing the legal system on individual working conditions

Saudi Arabia

1. Labour Law of 27 December 2005

Senegal

1. Labour Code (Act No. 97-17 of 1 December 1997)
2. Decree No. 96-154 of 19 February 1996 fixing the inter-professional and agricultural guaranteed minimum wages
3. National inter-occupational collective agreement of 27 May 1982

Serbia

1. Labour Law of 15 March 2005
2. Act on the Social and Economic Council, 2004

Seychelles

1. Constitution
2. Employment Act 1995 (No. 2) (c. 69)
3. Employment (National Minimum Wage) Regulations, 2007 (SI 2007 No. 55)
4. Employment (National Minimum Wage) (Exemption) Order, 2008

5. Employment (National Minimum Wage) (Exemption) Order, 2010
6. Employment (Wage Increase) Regulations, 1 July 2010

Singapore

1. Employment Act (Cap. 91)
2. National Wages Council Guidelines 2012/2013

Slovakia

1. Constitution of 1992
2. Labour Code (No. 311 of 2001)
3. Act No. 633/2007 of 5 December 2007 on minimum wages
4. Act No. 103/2007 of 9 February 2007 on tripartite consultations at the national level
5. Act No. 125/2006 of 2 February 2006 on labour inspection and to supplement Act No. 82/2005 on illegal work and employment

Slovenia

1. Employment Relationships Act of 24 April 2002
2. Minimum Wage Act of 19 February 2010
3. Rules on the Operation of the Economic and Social Council (consolidated text, 29 June 2007)

South Africa

1. Basic Conditions of Employment Act 1997 (No. 75)
2. Labour Relations Act 1995 (No. 66)

Spain

1. Constitution of 29 December 1978
2. Royal Legislative Decree No. 1/1995 of 29 March 1995 enacting the Workers' Charter
3. Royal Legislative Decree No. 5/2000 of 4 August 2000 to approve the Act on infringements and sanctions in the social order
4. Royal Legislative Decree No. 1620/2011 of 14 November 2011 regulating the special labour relationship of domestic workers
5. Royal Legislative Decree No. 1368/1985 of 17 July 1985 regulating the special labour relationship of disabled persons working in special employment centres
6. Royal Decree No. 1717/2012 of 28 December 2012 fixing the interoccupational minimum wage for 2013

Sri Lanka

1. Wages Boards Ordinance, 1941 (No. 27)
2. Wages Boards Regulations, 1971
3. Shop and Office Employees (Regulation of Employment and Remuneration) Act 1954
4. Industrial Disputes Act 1950 (No. 43)

Swaziland

1. Employment Act 1980
2. Industrial Relations Act 2000
3. Wages Act 1964
4. Wages Councils Regulations, 1964

Sweden

1. Act (1976:580) on co-determination in the workplace

Switzerland

1. Constitution of 18 April 1959
2. Code of Obligations
3. Federal Act of 28 September 1956 allowing for extension of the scope of application of collective agreements
4. Federal Act of 16 December 2005 on foreign nationals (LEtr)
5. Federal Act of 8 October 1999 on accompanying measures applicable to posted workers and to checks on minimum wages provided for by standard employment contracts (Posted Workers Act, LDét)

Syrian Arab Republic

1. Labour Law (No. 17 of 12 April 2010)
2. Act No. 56 of 2004 regulating agricultural relationships

Tanzania, United Republic of

1. Employment and Labour Relations Act 2004
2. Labour Institutions Act 2004
3. Regulation of Wages and Terms of Employment Order 2010

Zanzibar

4. Employment Act 2005 (No. 11)

Thailand

1. Labour Protection Act of 12 February 1998
2. Ministerial Regulation No. 10 of 14 September 1998 issued under the Labour Protection Act
3. Ministerial Regulation No. 9 of 19 August 1998 issued under the Labour Protection Act
4. Home Workers Protection Act of 11 November 2010

The former Yugoslav Republic of Macedonia

1. Constitution of 17 November 1991
2. Labour Relations Act 2005
3. Minimum Wage Law of 1 February 2012

Timor-Leste

1. Labour Law, Act No. 4/2012 of 21 February 2012
2. Decree-Law No. 19/2010 of 1 December 2010 on the Statute of the General Labour Inspectorate

Togo

1. Constitution, amended by Act No. 2002-029 of 31 December 2002
2. Labour Code, Act No. 2006-010 of 13 December 2006
3. Act No. 2011-18 of 24 June 2011 on export processing free zones
4. Decree No. 2001-143/PR of 4 July 2001 on the organization and operation of the National Council for Labour and Social Laws
5. Statutory Order No. 009/2012/MTESS/DGTLS of 11 May 2012
6. Interoccupational collective agreement, 20 December 2011

Trinidad and Tobago

1. Minimum Wages Act 1976
2. Minimum Wages Order, 2010

Tunisia

1. Act No. 66-27 of 30 April 1966 promulgating the Labour Code
2. Decree No. 2012-1981 of 20 September 2012 setting the interoccupational minimum guaranteed wage in non-agricultural sectors governed by the Labour Code
3. Decree No. 2012-1982 of 20 September 2012 setting the minimum guaranteed wage for agricultural workers
4. Decree No. 94-1600 of 18 July 1994 setting minimum amounts for the apprenticeship allowance

Turkey

1. Constitution of 1982
2. Labour Act, Act No. 4857 of 22 May 2003
3. Act No. 3308 of 6 May 1986 on apprenticeship and occupational training
4. Free Trade Zones Act of 15 June 1985
5. Minimum Wage Regulations, 2004
6. Resolution No. 2012/1 on the minimum wage for 2013

Uganda

1. Minimum Wages Advisory Boards and Wages Councils Act (Cap. 221)

Ukraine

1. Constitution of 1996
2. Labour Code, Act No. 322-VIII of 10 December 1971
3. Act on Wages of 24 March 1995
4. Code on Administrative Offences, 1984

United Kingdom

1. National Minimum Wage Act 1998
2. National Minimum Wage Regulations, 1999
3. Employment Act 2008
4. Enterprise and Regulatory Reform Act 2013
5. Equality Act 2010

United States

Federal legislation

1. Fair Labor Standards Act of 1938
2. Code of Federal Regulations, Title 29 (Labor), Chapter V (Wage and hour division)

Uruguay

1. Constitution of 1967
2. Act No. 18.566 of 11 September 2009 on the collective bargaining system
3. Act No. 10.449 of 10 November 1943 on the Wages Council
4. Act No. 9.910 of 5 January 1940 on home work
5. Act No. 18.846 of 25 November 2011 on development of the clothing sector
6. Act No. 17.856 of 20 December 2004 on the basis for benefits and contributions

Uzbekistan

1. Labour Code of 21 November 1995

Venezuela, Bolivarian Republic of

1. Constitution
2. Decree No. 8.938 of 30 April 2012 on the Organic Act on labour and on male and female workers
3. Decree No. 8.920 of 24 April 2012

Viet Nam

1. Labour Code, Act No. 10/2012/QH13 of 18 June 2012
2. Decree No. 182/ND-CP of 14 November 2013 on region-based minimum wage levels
3. Decree No. 31/2012/ND-CP of 12 April 2012 on the general minimum wage level in the public sector
4. Decree No. 47/2010/ND-CP of 6 May 2010 on administrative sanctions for violations of the Labour Code
5. Decree No. 36-CP of 24 April 1997 issuing the regulation on industrial zones, export processing zones and high technology zones
6. Decree No. 49/2013/ND-CP of 14 May 2013 detailing the implementation of a number of sections of the Labour Code on wages

Yemen

1. Labour Code (Act No. 5 of 1995)

Zambia

1. Employment Act 1965 (No. 57)
2. Minimum Wages and Conditions of Employment Act 1982 (No. 25)
3. Minimum Wages and Conditions of Employment (General) Order (SI 2011, No. 2)
4. Minimum Wages and Conditions of Employment (General) (Amendment) Order (SI 2012, No. 46)
5. Minimum Wages and Conditions of Employment (Shop Workers) Order (SI 2011, No. 1)
6. Minimum Wages and Conditions of Employment (Shop Workers) (Amendment) Order (SI 2012, No. 47)
7. Minimum Wages and Conditions of Employment (Domestic Workers) Order (SI 2011, No. 3)
8. Minimum Wages and Conditions of Employment (Domestic Workers) (Amendment) Order (SI 2012, No. 45)

Zimbabwe

1. Labour Act (c. 28:01)
2. Public Service Act (c. 16:04)
3. Public Service (Public Service Joint Negotiation Council) Regulations (SI 1997, No. 141)
4. Labour Relations (Domestic Workers) Employment Regulations (SI 1992, No. 377)
5. Health Service (Health Service Bipartite Negotiating Panel) Regulations (SI 2006, No. 111)
6. Labour Relations (Specification of Minimum Wages) Notice, 1996

Appendix V

Reduced minimum wages for young workers

Country	Age group(s) and reduction in the minimum wage	Other factors taken into consideration
Africa		
Chad	<ul style="list-style-type: none"> ■ From 14 to 16 years of age: Maximum reduction of 40 per cent in the minimum wage of the post occupied. ■ From 16 to 18 years of age: Maximum reduction of 20 per cent in the minimum wage of the post occupied. <p>However, no salary may be lower than the SMIG, or than the agricultural guaranteed minimum wage (SMAG)</p>	Reduction not applicable to persons who hold an occupational aptitude certificate (CAP) and entrants to the profession, or to persons who have successfully passed the leaving exam of a centre for accelerated vocational training.
Mauritania	<ul style="list-style-type: none"> ■ Under 18 years of age: A decree may set rates of reduction in the interoccupational guaranteed minimum wage (SMIG). 	
Mauritius	<p>Sugar industry (agricultural workers)</p> <ul style="list-style-type: none"> ■ From 15 to 17 years of age:¹ <ul style="list-style-type: none"> – Field workers (non-special categories): Reduction of around 25 per cent in the minimum wage for an adult male worker and a reduction of around 6 per cent in the minimum wage for an adult female worker. – Field workers (special categories): Reduction of around 21 per cent in the minimum wage for an adult male worker and a reduction of around 7 per cent in the minimum wage for an adult female worker. <p>Tea industry, group A</p> <ul style="list-style-type: none"> ■ From 15 to 17 years of age:² <ul style="list-style-type: none"> – Field workers: Reduction of around 25 per cent in the minimum wage for an adult male worker and a reduction of around 8 per cent in the minimum wage for an adult female worker. 	
Tunisia	<p>Non-agricultural sector</p> <ul style="list-style-type: none"> ■ Under 18 years of age: Maximum reduction of 15 per cent of the wage of an adult worker.³ 	
The Americas		
Canada	<p>Ontario</p> <ul style="list-style-type: none"> ■ Students below the age of 18 working up to 28 hours per week during the school term, or employed during the school holidays: Reduction of around 6 per cent.⁴ 	
Chile	<ul style="list-style-type: none"> ■ Under 18 years of age: Reduction of around 25 per cent⁵ in the national minimum wage. 	

Country	Age group(s) and reduction in the minimum wage	Other factors taken into consideration
<i>Costa Rica</i>	<ul style="list-style-type: none"> ■ From 13 to 18 years of age: Upon ministerial authorization, recruitment possible as entry-level workers in semi-skilled jobs. ■ From 15 to 20 years of age: Upon ministerial authorization, recruitment possible as entry-level workers in skilled, non-apprenticeship positions. <p>Entry-level workers: 50 per cent reduction possible in the first year and 25 per cent in the second year (no reduction in the third year).⁶</p>	
United States	<p>Federal legislation</p> <ul style="list-style-type: none"> ■ Under 20 years of age: Reduction of around 41 per cent.⁷ 	Only applicable for the first 90 consecutive calendar days following recruitment.
<i>Uruguay</i>	Wage councils may take account, in fixing wages, of special situations resulting in particular from the age of certain workers in an industrial or commercial establishment	
Asia		
<i>Australia</i>	<p>National minimum wage</p> <ul style="list-style-type: none"> ■ Under 16 years of age: Reduction of 63.2 per cent in the national minimum wage. ■ 16 years of age: 52.7 per cent reduction. ■ 17 years of age: 42.2 per cent reduction. ■ 18 years of age: 31.7 per cent reduction. ■ 19 years of age: 17.5 per cent reduction. ■ 20 years of age: 2.3 per cent reduction. <p>Modern awards</p> <p>Most modern awards establish reductions, e.g. 2010 modern award for the fast food sector:</p> <ul style="list-style-type: none"> ■ under 16 years of age: 60 per cent reduction in the minimum wage. ■ 16 years of age: 50 per cent reduction. ■ 17 years of age: 40 per cent reduction. ■ 18 years of age: 30 per cent reduction. ■ 19 years of age: 20 per cent reduction. ■ 20 years of age: 10 per cent reduction. 	
India	Different minimum wage rates may be fixed for children (under 14 years of age) and adolescents (from 14 to 17 years of age)	

Country	Age group(s) and reduction in the minimum wage	Other factors taken into consideration
New Zealand	<ul style="list-style-type: none"> ■ From 16 to 19 years of age: The so-called “starting-out” minimum wage, 20 per cent reduction.⁸ 	<p>Reduction only applicable if the young worker does not supervise or train other workers and if he/she belongs to the following categories:</p> <ul style="list-style-type: none"> – young people aged 16–17 who have not yet completed six months of continuous employment with their current employer; – young people aged 18–19 who have received social benefits continuously for at least six months and who have not yet completed six months continuous employment with any employer since they started being paid a benefit; – young people aged 16–19 who are required by their employment agreement to undertake industry training involving at least 40 credits a year in order to become qualified.
Pakistan	At the request of the provincial government, the Minimum Wage Council recommends the minimum wage rates for young workers (under 17 years of age) employed in the industrial establishments of the province.	
Europe		
<i>Albania</i>	The Council of Ministers may fix a reduced minimum wage for young workers (provision not implemented according to the Government).	
Belgium	<p>Transitional arrangements are currently in force and aim to abolish the reductions applicable to young people aged 18 and over by 1 January 2015, except for those who are hired under contract as students, or enrolled on work-linked training schemes.</p> <p>Since 1 April 2013:⁹</p> <ul style="list-style-type: none"> ■ 16 years and under: 30 per cent reduction in the guaranteed average monthly minimum income (RMMMIG) for adult workers. ■ 17 years of age: 24 per cent reduction. ■ 18 years of age: 12 per cent reduction. ■ 19 years of age: 8 per cent reduction. ■ 20 years of age: 4 per cent reduction. 	
Finland	<p>Varies depending on collective agreements, e.g. collective agreement for employees of the technology industry (2011–13)</p> <ul style="list-style-type: none"> ■ Under 18 years of age: Scale including four levels set according to year of birth. 	
<i>France</i>	<ul style="list-style-type: none"> ■ Under 17 years of age: 20 per cent reduction in the minimum interoccupational growth wage (SMIC). ■ Between the ages of 17 and 18: 10 per cent reduction. 	Reduction abolished for young workers with six months' professional experience in their branch of activity

Country	Age group(s) and reduction in the minimum wage	Other factors taken into consideration
Greece	Under 25 years of age: approximately 13 per cent reduction. ¹⁰	
Ireland	<ul style="list-style-type: none"> ■ Under 18 years of age: 30 per cent reduction in the national hourly minimum wage. ■ Workers employed before the age of 18 and still in employment after reaching this age: <ul style="list-style-type: none"> – first year of employment after reaching the age of 18: 20 per cent reduction; – second year of employment after reaching the age of 18: 10 per cent reduction. ■ Workers employed for the first time after reaching the age of 18: <ul style="list-style-type: none"> – First year of employment: 20 per cent reduction; – Second year of employment: 10 per cent reduction. 	
Iceland	<p>Varies depending on collective agreements, e.g. collective agreement for the trade sector.</p> <ul style="list-style-type: none"> ■ 14 years of age: 33 per cent reduction in the minimum wage for adults; ■ 15 years of age: 24 per cent reduction. 	
Israel	The Minister of Labour and Social Affairs may decide to implement the Act on the minimum wage for workers under 18 years of age. Eventually, he can fix a reduced minimum wage rate for young workers.	
Luxembourg	<ul style="list-style-type: none"> ■ From 15 to 17 years of age: 25 per cent reduction in the minimum social wage. ■ From 17 to 18 years of age: 20 per cent reduction. 	
Malta	<ul style="list-style-type: none"> ■ Under 17 years of age: Reduction of around 6 per cent in the national minimum wage. ■ From 17 to 18 years of age: Reduction of around 4 per cent.¹¹ <p>For certain sectors, minimum wages are also differentiated by age.</p>	
Norway	<p>Varies depending on collective agreements, e.g. collective agreement for the construction sector (2012–14):</p> <ul style="list-style-type: none"> ■ Under 18 years of age: Reduction of around 33 per cent.¹² 	
Netherlands	<ul style="list-style-type: none"> ■ 15 years of age: 70 per cent reduction in the minimum wage. ■ 16 years of age: 65.5 per cent reduction. ■ 17 years of age: 60.5 per cent reduction. ■ 18 years of age: 54.5 per cent reduction. ■ 19 years of age: 47.5 per cent reduction. ■ 20 years of age: 38.5 per cent reduction. ■ 21 years of age: 27.5 per cent reduction. ■ 22 years of age: 15 per cent reduction. 	

Country	Age group(s) and reduction in the minimum wage	Other factors taken into consideration
United Kingdom	<ul style="list-style-type: none"> ■ From 16 to 17 years of age: Reduction of around 41 per cent in the national minimum wage. ■ From 18 to 20 years of age: Reduction of around 20 per cent.¹³ 	
Sweden	<p>Varies depending on collective agreements, e.g. a national agreement for the hotels and restaurants sector:¹⁴</p> <ul style="list-style-type: none"> ■ Under 17 years of age: Reduction of around 35 per cent in the minimum wage of an adult worker without professional experience. ■ 17 years of age: 27 per cent. ■ 18 years of age: 24 per cent. ■ 19 years of age: 16 per cent. 	
Switzerland	<p>Varies depending on collective agreements, e.g. a collective agreement for the Swiss tile and brick industries:¹⁵</p> <ul style="list-style-type: none"> ■ Under 19 years of age: reduction of around 9.5 per cent. ■ Between 19 and 22 years of age: Reduction of around 5 per cent in the minimum wage for workers from the age of 23. 	
Turkey	<ul style="list-style-type: none"> ■ Under 16 years: Reduction of around 14 per cent in the national minimum wage.¹⁶ 	

¹ In 2012: Minimum wage for field workers (non-specialized categories): adult male 6,664.80 Mauritian rupees (MUR); adult female MUR5,304.25; young people MUR4,960.89. Special categories: adult male MUR5,144.20; adult female MUR4,369.08; young people: MUR4,037.94.

² In 2012: Minimum wage for field workers: adult male MUR6,307; adult female, MUR5,161; young people MUR4,737.

³ In the agricultural sector, the SMAG is not applicable to young people under 18.

⁴ Since 2010, hourly minimum wage of 9.60 Canadian dollars (CAD) compared to CAD10.25 for adults.

⁵ Since 1 August 2013, monthly minimum wage of 156,770 Chilean pesos (CLP), while that of adults is set at CLP193,000.

⁶ However, as highlighted by the Government, these regulations are only partially applicable, as they are antiquated and because of the historical context in which they were adopted.

⁷ Minimum wage of US\$4.25 compared to US\$7.25 for adult workers.

⁸ Since 1 May 2013, hourly minimum wage for adults: 13.75 New Zealand dollars (NZD); starting minimum wage: NZD11.

⁹ On 1 January 2014, the reductions will be 6 per cent at 18 years of age, 4 per cent at 19 years of age and 2 per cent at 20 years of age. On 1 January 2015, these reductions will be completely abolished. However, only workers aged at least 19 and 20, respectively, will be eligible for the higher RMMM rates after six months' service in the establishment.

¹⁰ For workers over 25 years of age, the minimum wage is fixed at €586.08 a month and at €26.18 a day for skilled workers. For workers under 25, it is fixed at €510.95 a month and at €22.83 a day for skilled workers.

¹¹ In 2013, minimum wage for persons under 17: €152.57 per week; at 17 years of age: €155.41 per week; from 18 years of age: €162.19 per week.

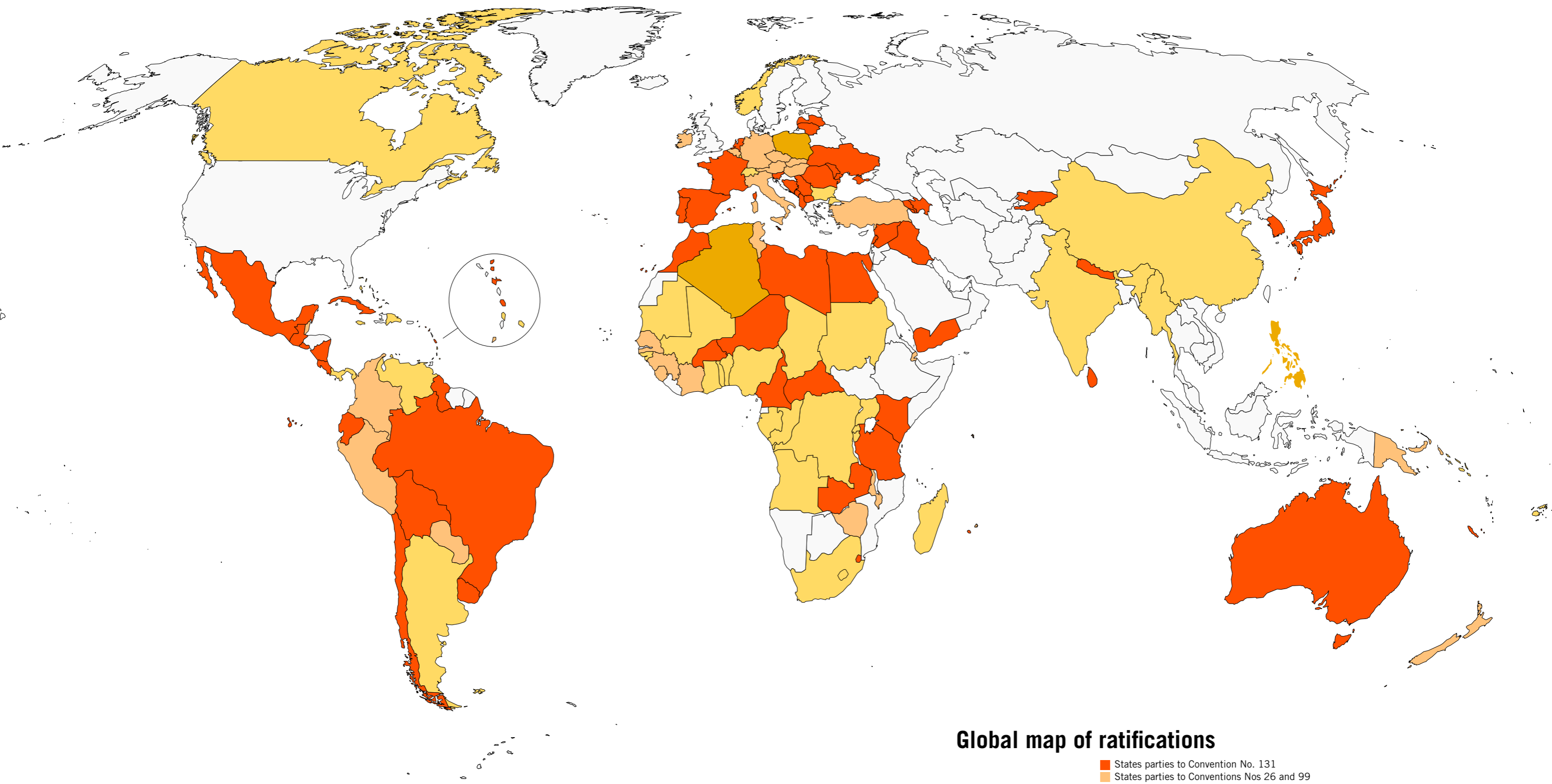
¹² Collective agreement for the construction sector, § 2-1. Hourly minimum wage for employees without experience: 152 Norwegian kroner (NOK); for young people under 18 years of age: NOK102.

¹³ From 1 October 2013, hourly minimum wage for adult workers: £6.31; for young people aged 18–20 years: £5.03; for young people aged 16–17 years: £3.72.

¹⁴ From 1 June 2012, hourly minimum wage for adult workers without experience: 108.5 Swedish kroner (SEK); for persons under 17: SEK70.70; 17 years of age: SEK78.80; 18 years of age: SEK82.90; 19 years of age: SEK91.10.

¹⁵ Federal Council Decree extending the scope of the collective agreement for the Swiss tile and brick industries, extension and amendment of 3 September 2013. Workers fully able to work from the age of 23, without professional apprenticeship, with or without professional experience: 4,175 Swiss francs (CHF) per month; for workers fully able to work aged between 19 and 22 years, without professional apprenticeship, with or without professional experience: CHF3,975 per month. Workers fully able to work up to the age of 19, without professional apprenticeship, with or without professional experience: CHF3,775 per month.

¹⁶ From 1 July 2013, daily minimum wage for workers from 16 years of age: 34.05 Turkish lira (TRY); young people under 16: TRY29.25.

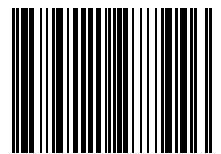


Global map of ratifications

- States parties to Convention No. 131
- States parties to Conventions Nos 26 and 99
- States parties to Convention No. 26
- States parties to Convention No. 99



ISBN 978-92-2-127744-6



9 789221 277446