

Report by the Government of Aruba - 2007 -



in accordance with article 22 of the Constitution of the
International Labour Organisation

Table of Contents

FOREWORD	ii
FORCED LABOUR, 1930 (no. 29)	1
<i>Division I - V</i>	1
LABOUR INSPECTION, 1947 (no. 81)	2
NIGHT WORK OF YOUNG PERSONS (INDUSTRY), 1948 (no. 90)	3
<i>Division I - VI</i>	3
LABOUR CLAUSES (PUBLIC CONTRACTS), 1949 (no. 94)	4
<i>Observation 2003</i>	4
<i>Direct Request 2003</i>	4
<i>Division I - VI</i>	4
PROTECTION OF WAGES, 1949 (no. 95)	5
<i>Direct Request 2003</i>	5
<i>Division I - VI</i>	6
Comments by the employer's and worker's organisations.....	6
The Government's Reaction:	6
ABOLITION OF FORCED LABOUR, 1957 (no. 105)	7
<i>Division I - VI</i>	7
MINIMUM WAGE FIXING, 1970 (no. 131)	8
<i>Direct Request 2003</i>	8
<i>Division I - VI</i>	9
MINIMUM AGE, 1973 (no. 138)	11
<i>Direct Request 2006</i>	11
<i>Division I - VI</i>	12
Comments by the employer's and worker's organisations.....	12
The Government's Reaction	12
Annex Reference List	13

FOREWORD

The Government of Aruba is requested to communicate to the International Labour Office of the ILO, a simple report on the application of the following Conventions (C29, C81, C90, C94, C95, C105, C131, C138) for the period ending May 2007.

If the Committee of Experts or the Conference Committee has requested additional information or has made an observation on the measures adopted for the application of the Convention and Recommendations, the Government of Aruba will supply in this report the information for which was asked or indicate the action taken by the Government.

The Government replies to the questions raised in Division I through VI of the corresponding report forms on the application of the corresponding Convention and – if any – to the Comments raised by the Committee.

The Government communicated a copy of this report to the list of employers' and workers' representative organisations and representatives of the Government as noted per Convention in this report.

FORCED LABOUR, 1930 (no. 29)

(Ratification registered by the Netherlands Antilles on 31 March 1934 and applicable to the country of Aruba as per 1 January 1986)

This report regards the period 1 June 2005 to 31 May 2007.

Division I - V

- I. The Government of Aruba informs that no changes have been made to any legislation during the reporting period.
- II. The Government of Aruba refers the Committee to past reports for the application of the Articles of this Convention.
- III. There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.
- IV. The Government refers the Committee of Experts to past reports.
- V. Copies of this report were sent to:
The employer's organisations:
 - Associated General Contractors of Aruba AGCA
 - The Aruba Hotel and Tourism Association AHATA
 - The Aruba Trade and Industry Association ATIA
The worker's organisations:
 - The Union of Nurses of Aruba ABV
 - The Federation of Workers of Aruba FTA
 - The Union of Public and Private Employees of Aruba SEPPA

LABOUR INSPECTION, 1947 (no. 81)

(Ratification registered by the Netherlands Antilles on 15 September 1952 and applicable to the country of Aruba as per 1 January 1986)

This report regards the period 1 June 2005 to 31 May 2007.

Division I - VI

- I. The Government of Aruba informs that no changes have been made to any legislation during the reporting period.
- II. The Government of Aruba refers the Committee to past reports for the application of the Articles of this Convention.
- III. There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.
- IV. The Government refers the Committee of Experts to past reports for details regarding the practical difficulties encountered in the application of the Convention.
- V. The Government submits statistical tables from the annual report of the Inspection Division of the Labour Department for year-end 2005 (Annex 1) and part of the annual report of the Technical Inspection Department for year-end 2005 (Annex 2).
- VI. Copies of this report were sent to:

The employer's organisations:

- | | |
|--|-------|
| ➤ Associated General Contractors of Aruba | AGCA |
| ➤ The Aruba Hotel and Tourism Association | AHATA |
| ➤ The Aruba Trade and Industry Association | ATIA |

The worker's organisations:

- | | |
|--|-------|
| ➤ The Union of Nurses of Aruba | ABV |
| ➤ The Federation of Workers of Aruba | FTA |
| ➤ The Union of Public and Private Employees of Aruba | SEPPA |

NIGHT WORK OF YOUNG PERSONS (INDUSTRY), 1948 (no. 90)

(Ratification registered on 1 January 1986)

This report regards the period 1 June 2002 to 31 May 2007.

Division I - VI

- I. The Government of Aruba informs that no changes have been made to any legislation during the reporting period regarding night work for young persons in the industry sector.
- II. The Government of Aruba refers the Committee to past reports for the application of the Articles of this Convention.
- III. The Government refers the Committee to past reports.
- IV. There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.
- V. The Government of Aruba refers the Committee to past reports.
- VI. Copies of this report were sent to:

The employer's organisations:

- | | |
|--|-------|
| ➤ Associated General Contractors of Aruba | AGCA |
| ➤ The Aruba Hotel and Tourism Association | AHATA |
| ➤ The Aruba Trade and Industry Association | ATIA |

The worker's organisations:

- | | |
|--|-------|
| ➤ The Union of Nurses of Aruba | ABV |
| ➤ The Federation of Workers of Aruba | FTA |
| ➤ The Union of Public and Private Employees of Aruba | SEPPA |

LABOUR CLAUSES (PUBLIC CONTRACTS), 1949 (no. 94)

(Ratification registered by the Netherlands Antilles on 10 June 1952 and applicable to the country of Aruba as per 1 January 1986)

This report regards the period 1 June 2002 to 31 May 2007.

Observation 2003

The Government acknowledges the Committee's comments and refers the Committee to the Government's remarks under Direct Request of this report.

Direct Request 2003

The Government of Aruba informs the Committee that there are no signed contracts involved for work to be performed for the Government. For government projects, the Government issues a public specification of the project to which interested parties submit a bid. The chosen bidder will receive a confirmation letter informing the company of that fact.

In order to comply with the provisions of this Convention, the Government is currently in the preliminary stages of discussions, namely between the Labour Department and the Department of Public Works. The Government will inform the Committee on the progress made in this regard.

Division I - VI

- I. The Government of Aruba informs that no changes have been made to any legislation during the reporting period.
- II. The Government of Aruba refers the Committee to past reports for the application of the Articles of this Convention.
- III. The Government refers the Committee to past reports.
- IV. There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.
- V. The Government has no observations on the application of this Convention.
- VI. Copies of this report were sent to:

The employer's organisations:

- | | |
|--|-------|
| ➤ Associated General Contractors of Aruba | AGCA |
| ➤ The Aruba Hotel and Tourism Association | AHATA |
| ➤ The Aruba Trade and Industry Association | ATIA |

The worker's organisations:

- | | |
|--|-------|
| ➤ The Union of Nurses of Aruba | ABV |
| ➤ The Federation of Workers of Aruba | FTA |
| ➤ The Union of Public and Private Employees of Aruba | SEPPA |

PROTECTION OF WAGES, 1949 (no. 95)

(Ratification registered by the Netherlands Antilles on 10 June 1955 and applicable to the country of Aruba as per 1 January 1986)

This report regards the period 1 June 2002 to 31 May 2007.

Direct Request 2003

Article 4. According to the State Decree giving effect to article 7 of the Labour Ordinance, the amount for wages in kind as it regards meals is Afls. 1.50. (AB 1991 no. GT 20 - Annex 3). The Government informs the Committee that there is no defined schedule for the revision of the system of allowances in kind.

Article 8. The Government informs the Committee that there is currently no legislative obligation for the employer to explicitly inform employees of the deductions from their salary. In practice, employees receive a pay slip with the deductions worked out; the employee receives this at the time of his/her salary payment. If the employer makes payment by automatic bank transfer, the employee would receive the pay slip around the payment date.

As it regards caution money specifically, the Government informs the Committee that the national legislation does not permit this type of deduction. The only deductions allowed are, as the Government has previously stated in past reports, those deductions mentioned in article 1614r of the Civil Code.

Article 10, paragraph 2. The Government acknowledges the Committee's statements and informs the Committee that this issue has been brought to the attention of the committee for the modernisation of the labour legislation (CMLL). The Government will keep the Committee up to date on the progress made in this regard.

Article 12(2), 13(1) and 14. The Government kindly refers the Committee to the Government's 2002 Report where the Government communicated to the Committee that the final settlement of wages is regulated in article 1614s of the Civil Code. Additional final settlement payments include vacation days not taken (article 10, Vacation Ordinance) and, where applicable, severance pay (as prescribed by article 3 of the Severance Pay Ordinance). The Civil Code, according to article 1614l, further dictates within which periods payment of the wage must be executed. Wages determined in weekly, bi-weekly or monthly rates must be paid at the end of the weekly, bi-weekly or monthly period, respectively. No law or regulation deviates from this payment scheme by introducing a separate system at the time of the termination of the labour relation.

Article 16. The Government kindly refers the Committee to Division V of the Government's report on Minimum Wage Fixing (C131) for statistical information regarding inspections carried out and violation in wage payments.

Division I - VI

- I. The Government of Aruba informs that no changes have been made to any legislation during the reporting period.
- II. The Government of Aruba refers the Committee to past reports for the application of the Articles of this Convention.
- III. The Government refers the Committee to past report.
- IV. There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.
- V. The Government informs that there are no reports or statistical information available.
- VI. Copies of this report were sent to:

The employer's organisations:

- | | |
|--|-------|
| ➤ Associated General Contractors of Aruba | AGCA |
| ➤ The Aruba Hotel and Tourism Association | AHATA |
| ➤ The Aruba Trade and Industry Association | ATIA |

The worker's organisations:

- | | |
|--|-------|
| ➤ The Union of Nurses of Aruba | ABV |
| ➤ The Federation of Workers of Aruba | FTA |
| ➤ The Union of Public and Private Employees of Aruba | SEPPA |

Comments by the employer's and worker's organisations

Article 4. The FTA contends that in practice and as convened in many collective working agreements, the minimum amount for wages in kind as it regards meals is Afl. 5.00; the Tax Department also considers this amount as the taxable portions of the worker's wage.

Article 8. The FTA informs the Committee that workers are informed of the deductions beforehand instead of every time payment is made or after-the-fact. The AHATA informs the Committee that in fast food establishments and security companies, workers who must wear company uniforms pay a deposit for the uniforms and upon return of the uniform, the deposit is refunded. AHATA considers the deposit a form of caution money.

Article 12(2). As it regards the Government's statement as to the wages 'determined in weekly, bi-weekly or monthly period', the FTA would like to add that in some companies, payment periods have been extended and workers receive their payment on the 5th and 20th of each month.

The Government's Reaction:

The Government considers most of these comments informative and does not have any additional remarks besides the following.

Article 4. As it regards FTA's comments on the allowances in kind, the Government will look into this matter and inform the Committee accordingly.

Article 8. The Government does not agree with AHATA that uniform deposits are a form of caution money; it is a form to guarantee return of the uniform at the termination of employment and to make sure proper care is given to the uniform during the employment.

ABOLITION OF FORCED LABOUR, 1957 (no. 105)

(Ratification registered on 18 February 1960)

This report regards the period 1 June 2005 to 31 May 2007.

Division I - VI

- I. The Government of Aruba informs that no changes have been made to any legislation during the reporting period regarding abolition of forced labour.
- II. The Government of Aruba refers the Committee to past reports.
- III. The Government of Aruba refers the Committee to past reports.
- IV. There are no courts of law or other tribunals that have given decisions involving questions of principle relating to the application of this Convention.
- V. The Government informs that there are no statistics available on this Convention.
- VI. Copies of this report were sent to:

The employer's organisations:

- | | |
|--|-------|
| ➤ Associated General Contractors of Aruba | AGCA |
| ➤ The Aruba Hotel and Tourism Association | AHATA |
| ➤ The Aruba Trade and Industry Association | ATIA |

The worker's organisations:

- | | |
|--|-------|
| ➤ The Union of Nurses of Aruba | ABV |
| ➤ The Federation of Workers of Aruba | FTA |
| ➤ The Union of Public and Private Employees of Aruba | SEPPA |

MINIMUM WAGE FIXING, 1970 (no. 131)

(Ratification registered on 18 February 1986)

This report regards the period 1 June 2002 to 31 May 2007.

Direct Request 2003

Article 1. The Government would like to clarify the statements made in the Government's last report regarding trilateral consultation with representative organisations of employers and employees in the determination of the scope and coverage of the system of the minimum wage. Indeed, the Government stated that there are no structured consultation systems in place; however, this statement refers to the fact that there are no *other* special committees or otherwise appointed groups specially dedicated specifically to the evaluation and review of the minimum wage system, as the Government had reported on this issue in the past. The Government kindly refers the Committee to the Minimum Wage Ordinance, of which a copy already has been submitted in past reports. According to articles 2§2, 7§3, 13§1 and 3, the Government must consult the Social Economic Council when introducing changes to the minimum wage system. In the Government's 1997 report on this Convention, the Government explained the make-up of the Social Economic Council, established by state ordinance of 1987 no. 103, and consisting of representatives of employers and workers organisation and independent experts appointed by the Government.

Article 2. The Government takes due note of the Committee's comments regarding the binding force of the minimum wage. The hotel and restaurant industry in which the special points-value wage scheme is effective is the largest industry employing the largest group of workers in Aruba. As mentioned in past reports, this wage scheme is regulated in collective working agreements, enjoying the protection of worker's organisations and is renegotiated every couple of years.

As regards the principle of the binding force of the minimum wage, the Government assures the Committee that all employees are guaranteed the minimum wage. At no time can an employee receive less than what the Government has stipulated as the minimum wage. In the hotel and restaurant industry, service charges form an integral part of the minimum wage, and regardless of its amount, the minimum applicable remuneration is guaranteed by law in the Minimum Wage Ordinance and cannot be reduced under any circumstances, with exception of the instance prescribed by article 11 of said ordinance, which is not applicable here.

The Government would like to explain further the points system of the service charge portion of the minimum wage, applicable only in the food and beverage departments of the hotel and restaurant industry.

Each category of the staff is assigned a points value. This point's value varies from hotel to hotel and restaurant to restaurant. The general rule is that those workers who are in direct contact with the customer have the highest points value. Supervisory positions have more points. The Government attaches copies of three

different collective working agreements for the Committee's review of the article regarding the value of points and the service charge (Annex 4).

For the sale of products and/or services, a 15% service charge is automatically added to the guest invoice. The service charge is divided and allotted to the salaries of the service staff and kitchen and storeroom employees and to cover breakage and training expenses, according to the points system. The service charge is thus not a gratuity offered by the patron to a specific service employee, but rather a company charge imposed on the patron.

For example, the breakdown of the 15% service charge may look like the following:

Allotted percentage	Beneficiary post	Points
10%	service staff	3
3%	kitchen, bar and storeroom employees	2
1%	breakage	-
1%	training	-

The total sale of guest checks (Tot. GC) for a two-week period is tallied and allotted according to above percentage points. This total (SS) is then divided by the total amount of point (Tot AP) accumulated by all the employees eligible for the service charge. The result is the total value per point (PP). The PP is then multiplied by the total hours worked (Tot HRS) by an individual employee and the result is multiplied by the allotted points for that individual employee category. The result of this calculation is the wage for a two-week period. Below is an example for the calculation of a service staff employee:

$$\text{Tot. GC} \times 10\% = \text{SS} / \text{Tot AP} = \text{PP} \times \text{Tot HRS} \times 3 \text{ pts} = \text{WAGE}$$

The part in this calculation that varies for determination of the salary per employee would be the "10%" and the "3 pts".

Article 5. The Government kindly refers the Committee to Part V of this report.

Division I - VI

- I. The Government of Aruba informs the Committee that since the Government's last report in 2002, the Government increased the minimum wage three times, namely in 2004, 2006 and 2007. The increases in the years 2004 and 2006 compensated for the increases in the consumer price index, as registered by the Central Bureau of Statistics. In 2007, however, the increase compensates for the introduction of a sales tax scheme as per 1 January 2007. Please see Annex 5, 6 and 7 for a copy of the state ordinances and Annex 8 for a general view of the minimum wage increases for the period 1996 - 2007.
- II. The Government of Aruba refers the Committee to past reports for the application of the Articles of this Convention.

III. Article 5

Inspection: The Government refers the Committee to previous reports.

IV. There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention during the reporting period. The Government, however, submits two court cases (Annex 9 and 10) from the Court of First Instance 1993/1994), one of which went in appeal to the Joint Court of the Netherlands Antilles and Aruba (Annex 11). In these cases the judge addressed the issue of a base salary.

V. Statistics:

During the reporting period, the labour inspectors issued verbal warnings to employers who violated the minimum wage regulation as a first offence. Written warnings follow verbal warnings but in this instance, it was not necessary as all the employers corrected the infraction. No penalties were issued.

	2002	2003	2004	2005	2006
Inspections carried out	497	707	845	1725	n.a.
Minimum wage violations	0	2	1	0	n.a.
Penalties imposed	0	0	0	0	n.a.

The Government kindly refers the Committee to the table (Annex 12) for statistical information regarding the number of persons earning a minimum wage. The table refers to the period 1999 – 2003. The Government also submits section 7 of the report “Werkgelegenheid in de arubaanse private sector” – July 2005, which provides statistical information on monthly wages for 2005 in the private sector (Annex 13).

In addition, the Government submits a report by the Social Economic Council regarding the increase of the minimum wage in 2007 (Annex 14).

VI. Copies of this report were sent to:

The employer’s organisations:

- Associated General Contractors of Aruba AGCA
- The Aruba Hotel and Tourism Association AHATA
- The Aruba Trade and Industry Association ATIA

The worker’s organisations:

- The Union of Nurses of Aruba ABV
- The Federation of Workers of Aruba FTA
- The Union of Public and Private Employees of Aruba SEPPA

MINIMUM AGE, 1973 (no. 138)

(Ratification registered on 18 February 1986)

This report regards the period 1 June 2005 to 31 May 2007.

Direct Request 2006

Article 2, paragraph 3. The state ordinance on compulsory education has not yet been approved. The Government will undoubtedly submit a copy of the ordinance once it has been adopted.

Article 3, paragraphs 1 and 2. The Government informs the Committee that discussions in the tripartite committee for the modernisation of the labour legislation (CMLL) are still in progress. The Government will keep the Committee afloat any future progress made in this regard.

Article 6 and 7. The Government will submit to the Committee the requested state decrees once they have been created and have entered into force.

Part V. The Government kindly refers the Committee to Part V of the body of the report on this Convention.

Division I - VI

- I. The Government of Aruba informs that no changes have been made to any legislation during the reporting period.
- II. The Government of Aruba refers the Committee to past reports for the application of the Articles of this Convention.
- III. The Government refers the Committee to previous reports.
- IV. There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.
- V. Statistics. The labour inspection did not report any infraction due neither to non-compliance with national legislation nor to non-compliance with the provisions of this convention.
- VI. Copies of this report were sent to:

The employer's organisations:

- | | |
|--|-------|
| ➤ Associated General Contractors of Aruba | AGCA |
| ➤ The Aruba Hotel and Tourism Association | AHATA |
| ➤ The Aruba Trade and Industry Association | ATIA |

The worker's organisations:

- | | |
|--|-------|
| ➤ The Union of Nurses of Aruba | ABV |
| ➤ The Federation of Workers of Aruba | FTA |
| ➤ The Union of Public and Private Employees of Aruba | SEPPA |

Comments by the employer's and worker's organizations

Article 2. The AGCA expresses its concern regarding the method "means and tools" to ensure that the students will attend school and comply with the compulsory education. The AGCA suggests that the Government exchange experiences and ideas with its peers from Curacao as they went through a similar process already.

The Government's Reaction

The Government is aware of the implications of the introduction of compulsory education, but children must be protected against child labour and have the right to an education.

Annex Reference List

- Annex 1. Annual Report, Inspection Division of the Department of Labour and Research
- Annex 2. Annual Report 2005, Section 8, Technical Inspection Department
- Annex 3. State Decree giving effect to article 7 of the Labour Ordinance
- Annex 4. Examples of collective working agreement, section on service charge
- Annex 5. State Ordinance, minimum wage increase as per 1 January 2004
- Annex 6. State Ordinance, minimum wage increase as per 1 January 2006
- Annex 7. State Ordinance, minimum wage increase as per 1 January 2007
- Annex 8. Minimum wages 1996 - 2007
- Annex 9. Court of First Instance, sentence no. 893 of June 1 1994
- Annex 10. Court of First Instance, sentence no. 528 of April 13 1994
- Annex 11. Joint Court, HF 389 / 1994
- Annex 12. Statistical Table for median wages, 1999 – 2003
- Article 13. Section 7 of report: Werkgelegenheid in de arubaanse private sector
- Annex 14. Report SER, Aanpassing minimumlonen per 1 januari 2007