

REPORT BY
THE GOVERNMENT
OF ARUBA
~2011~



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

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Foreword

The Government of Aruba is requested to communicate to the International Labour Office of the International Labour Organisation, a simple report on the application of the following Conventions:

- C008 – Unemployment Indemnity (Shipwreck)
- C009 – Placing of Seamen
- C022 – Seamen's Articles of Agreement
- C023 – Repatriation of Seamen
- C025 – Sickness Insurance (Agriculture)
- C029 – Forced Labour
- C069 – Certification of Ships' Cooks
- C074 – Certification of Able Seamen
- C081 – Labour Inspection
- C087 – Freedom of Association and Protection on the Right to Organise
- C105 – Abolition of Forced Labour
- C113 – Medical Examination (Fishermen)
- C114 – Fishermen's Articles of Agreement
- C118 – Equality of Treatment (Social Security)
- C121 – Employment Injury Benefits
- C138 – Minimum Age
- C144 – Tripartite Consultation
- C145 – Continuity of Employment (Seafarers)
- C146 – Seafarer's Annual Leave with Pay
- C147 – Merchant Shipping (Minimum Standards)

And a detailed report on the application of:

- C122 – Employment Policy

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

As it regards reports on the Conventions 8, 9, 22, 23, 69, 74, 87, 122, 144, 145, 146 and 147, the Government informs that Committee that it had fulfilled its reporting obligation in 2010, but due to inexplicable circumstances, these reports did not arrive at the ILO office. We are again submitting the Government's 2010 report as Annex 1 to this report.

The Government communicated a copy of this report to the following organisations of employers' and workers' representative organisations:

The employer's organisations:

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

The worker's organisations:

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

If any other employer's and or worker's representative organisation received any individual report, this information will be included under said report.

SICKNESS INSURANCE (AGRICULTURE) CONVENTION, 1921, (NO. 25)

(Ratification registered by the Netherlands Antilles on 30 May 1968 and applicable to the country of Aruba as per 1 January 1986)

Direct Request 2007

The Government will take due consideration of the Committee's invitation for the Government to consider the possibility of ratifying the Medical Care and Sickness Benefits Convention, 1969 (no. 130).

Division I - V

The Government informs the Committee that as per 1 January 2009, the maximum salary for which sickness insurance is awarded was increased from Afl. 4264,= to Afl. 4550,= (Annex 2).

There have been no other changes made to any legislation pertaining to the application of this Convention during the reporting period. There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.

The Government reports that there are no statistics available nor have there been reports made regarding the application of this Convention.

FORCED LABOUR CONVENTION, 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)

Direct Request 2010

Article 1(1) and 2(1). The Government again regrets to inform the Committee that no progress has been made in this regard. However, due to a recent complaint received (please see the Government's comments under Article 25) and thus a real example of potential forced labour, the Government will make efforts to attend to this matter with more urgency.

Article 2(2)(c). The Government informs the Committee that the Ordinance Penitentiary Regulations (AB 2005 no. 75) has still not yet come into force due to the reasons as described in the Government's previous report.

Article 25. The Government informs the Committee of a specific case involving claims of forced labour brought to the attention of the Labour Department during the reporting period.

Case. A foreign worker of the Indian nationality presented a claim against his employer (an Indian restaurant owner) for failure to pay him his promised wage and for forcing him to work extremely long hours without compensation. The investigation by the Labour Department resulted in determining that indeed the worker was underpaid, lived in a very tight apartment (located in the rear of the employer's home) he obligatorily shared with multiple other co-workers, and was provided meals only from the employer's restaurant. The claim of working extremely long hours without compensation could not be verified; the worker was not obligated to use the punch clock and his co-workers could not corroborate his story. Due to the other unacceptable and unlawful working and living conditions, the employee was removed from his living quarters and sent back to India, according to his own firm wishes, but not before the employer was obligated to pay him the balance of the monthly difference in wages and vacation time. The employer was not fined and no penal prosecution was deemed necessary.

Division I - IV

- 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. The Government refers the Committee to its comments under Article 25 of the Direct Request.
- IV. The Government refers the Committee of Experts to past reports.

Comments by Social partners:

The worker's representative FTA remarks as it regards the case that the Government must make clear that the worker did not file penal charges against the employer either. The Government concurs; the worker indeed did not file charges with the Prosecutor.

LABOUR INSPECTION CONVENTION, 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)

Direct Request 2010

Article 5(a) and (b). The Government acknowledges the remarks made by the Committee and will review the General Survey as referenced by the Committee on several specific matters concerning the proper functioning of the labour inspectorate. In this regard, the Government looks forward to its participation in this year's International Labour Conference for the agenda item labour inspection for more insights in bringing effect to this Convention.

As it regards information on measures taken or envisaged to ensure cooperation between inspection services and other services, public and private institutions, as well as employers and workers or their organisation, the Government regrettably informs the Committee that no progress has been made on this front.

The Government further informs the Committee that no systems for the recording of judicial decisions are currently in place for access by the labour inspectorate.

Article 12(1)(a) and (b). The Government informs the Committee that due to budget constraints it was unable to provide the necessary training for the inspectors. The Government hopes to impart to the Committee more favourable information in its subsequent report.

Article 13(1) and (2). The Government will submit to the Committee any amendments to the labour legislation when these become available. As the Committee is aware, the labour legislation of Aruba encompasses various ordinances and decrees, including but not limited to the Civil Code, the labour ordinance and its decrees and the labour registration ordinance. The work on the Civil Code and labour ordinance has been completed. All bills have been sent to the Department of Legislation in June 2011 for legal technical review, after which they will be sent to the Advisory Council and Social Economic Council for advice. The Minister of Labour is pending their contribution. The bills include the ordinance on temporary workers and its decrees and the ordinance on labour legislation compliance.

Article 17 and 18. The Government respectfully refers the Committee to its comments under Article 13(1) and (2) above.

Article 20. The Government kindly refers the Committee to Annex 3, 4 and 5, for the labour section of the Annual Reports of the Technical Inspection Department for year-end 2008, 2009 and 2010, respectively. Additionally, the Government submits to the Committee the Annual Reports of the Labour Inspectorate for year-end 2008 (Annex 6), 2009 (Annex 7) and 2010 (Annex 8).

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 refers the Committee to the appendices, as submitted with the Government's comments under Article 20 of the Direct Request.

ABOLITION OF FORCED LABOUR CONVENTION, 1957 (NO. 105)

(Ratification registered on 18 February 1960)

Direct Request 2010

Article 1(c). 1. The Government would like to correct the Committee's statements when it refers to "proposed amendments". The explanatory memorandum dates back to 1986 and provides explanation to the current text of the Penal Code, which was amended during that same time. The amendments were made after the Committee sited non-compliance with this Convention. No new *proposed* amendments are pending.

The Committee pointed out that endangering cargo or other assets may be punishable by sanctions involving compulsory labour only in cases of wilful acts (which would amount to criminal offences), and not where they are caused by negligence. The Government would like to assure the Committee, as it is also stated in the explanatory memorandum, that the punishment as referred to in articles 413 and 414 of the Penal Code can only be exacted in cases of wilful action or wilful non-action. Negligence does not fall under the breadth of this article and/or its explanatory memorandum.

2. The Government regrets to inform the Committee that the situation as regards section 83 of the Organic Act of Public Servants remains unchanged.

Division I - V

- 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 the Committee that there are no statistics available on this Convention.

MEDICAL EXAMINATION (FISHERMEN) CONVENTION, 1959 (NO. 113)

(Ratification registered on 15 December 1989)

Direct Request 2007

The Government takes note of the Committee's remarks and reiterates its commitment to give due consideration to the new standard on fishers' working and living conditions. The Committee will be duly informed of the Government's decision.

Division I - VI

The Government of Aruba informs that no changes have been made to any legislation during the reporting period regarding this convention and refers the Committee to past reports for the application of this Convention.

There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.

The Government reports that there are no statistics available nor have there been reports made regarding the application of this Convention.

FISHERMEN'S ARTICLES OF AGREEMENT CONVENTION, 1959 (NO. 114)

(Ratification registered on 18 February 1986)

Direct Request 2007

The Government takes note of the Committee's remarks and reiterates its commitment to give due consideration to the new standard on fishers' working and living conditions. The Committee will be duly informed of the Government's decision.

Division I - VI

The Government of Aruba informs that no changes have been made to any legislation during the reporting period regarding this convention and refers the Committee to past reports for the application of this Convention.

There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.

The Government reports that there are no statistics available nor have there been reports made regarding the application of this Convention.

EQUALITY OF TREATMENT (SOCIAL SECURITY) CONVENTION, 1962 (NO. 118)

(Ratification registered by the Netherlands Antilles on 3 July 1965 and applicable to the country of Aruba as per 1 January 1986)

Division I - VI

The Government refers the Committee to the Government's report on Sickness Insurance – Agriculture (C25) for changes made to legislation during the reporting period. No other changes regarding this convention have taken place and the Government refers the Committee to past reports for the application of this Convention.

There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.

The Government reports that there are neither statistics available nor have there been reports made regarding the application of this Convention.

EMPLOYMENT INJURY BENEFITS CONVENTION, 1964 (NO. 121)

(Ratification registered on 6 August 1986)

Direct Request 2008

Article 8. The Government regrets to inform the State Decree no. GT 6 of 1996 has not been amended to take account of the new diseases in the list of occupational diseases of the Convention, as amended in 1980.

Article 10(1). The Government would like to clarify that the Government does not enter into contracts with general practitioners, rather general practitioners enter into contracts with the entity in charge of giving effect to the state ordinance AZV, Uitvoeringsorgaan AZV (UO AZV). Further, the Government informs the Committee that after contract negotiations between the UO AZV and the general practitioners, domiciliary visits were not included in the contract. This does not mean that general practitioners will not pay domiciliary visits, but rather that domiciliary visits are left at the doctor's medical discretion. As the Committee may recall from previous reports, domiciliary visits are paid to patients in accordance with the general guidelines as provided in the NHG¹ standards of practice.

Article 16. The Government informs the Committee that the Government will give due consideration to the possibility of introducing provisions for increments in periodical payments or supplementary or special benefits for injured persons requiring the constant help or attendance of another person.

Article 17. Subsequent assessment may be requested and carried out should the person concerned indicate a change in degree of loss of capacitation. A request for interim assessment may also be submitted should the person concerned wish to change jobs for which a new assessment for this new job is necessary.

Additionally, the Government would like to mention that the initial assessment to determine the degree of loss may be performed even past the one year period, as referred to in the Government's previous report. This would be the case when the person concerned still has to have a necessary operation or his/her recovery is deemed incomplete. In this case, the final assessment will not be made until the degree of loss is not expected to change.

Article 21. The Government respectfully requests the Committee to clarify what it means with "substantial changes".

Article 22(1)(e). Benefits may be suspended when the person concerned does not follow the doctor's instructions for recovery or improvement in his/her degree of loss of capacitation.

¹ NHG: Nederlands Huisartsen Genootschap (Association of Dutch General Practitioners)

Article 26. The Government informs the Committee that cooperation amongst different institutions working towards rehabilitation and reintegration has not been formalised. Cooperation remains voluntarily.

Division I - VI

- I. The Government of Aruba submits the State Ordinance Sickness Insurance (Annex 9) as amended in accordance with the motion communicated to the Committee in the Government's 2006 report.
- 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. The Government informs the Committee that 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 refers the Committee to the attachments to this report.

MINIMUM AGE CONVENTION, 1973 (NO. 138)

(Ratification registered on 18 February 1986)

Observation 2009

Article 2, paragraph 3. The state ordinance on compulsory education has not yet been approved. The concept text of the ordinance has over the past years undergone several drafts. The Government is aware that it had been informing the Committee of this new law for years, however many factors played a roll in the delay of its adoption. One of the main considerations was the financial consequences of such a law and the placement of “problem” children (i.e. dangerous behaviour, age appropriateness etc.) The final draft will be resubmitted to the Parliament in the next couple of weeks. The Government trusts that the Parliament will adopt this last draft. The Government will undoubtedly submit a copy of the ordinance once it has been adopted.

Article 3, paragraph 1 and 2, Article 6, Article 7. The Government informs the Committee that the proposal of the CMLL regarding the types of work to be described by decrees (hazardous work, light work and work for vocational training and apprenticeship) is to eliminate the need for such a formal requirement in the future as it proved to be impracticable and ineffective. It is proposed to allow the Director of the Labour Department to determine through official labour policy which work would fall under these categories. The only formality to be tied to the stipulation would be its official publication in the state gazette.

Part V of the report form. The Government kindly refers the Committee to the Government’s comments under Direct Request of the Labour Inspection Convention report of this year.

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 to neither non-compliance with national legislation nor to non-compliance with the provisions of this convention.
- VI. Copies of this report were additionally sent to:

The worker’s organisations:

- Teacher’s Union of Aruba
- The Police Corps Union of Aruba

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List of Annexes

Annex	Document	Ref.
1	ILO Report 2010	
2	LB wijziging Lv Ziektekostenverzekering	C025
3	DTI Annual Report 2008	C081
4	DTI Annual Report 2009	C081
5	DTI Annual Report 2010	C081
6	Labour Inspection Annual Report 2008	C081
7	Labour Inspection Annual Report 2009	C081
8	Labour Inspection Annual Report 2010	C081
9	State Ordinance Sickness Insurance	C121

ANNEXES