

**REPORTS BY
THE GOVERNMENT
OF ARUBA
~2012~**



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, simple reports on the application of the following Conventions:

- C029 – Forced Labour
- C090 – Night Work of Young Persons (Industry)
- C094 – Labour Clauses (Public Contracts)
- C095 – Protection of Wages
- C105 – Abolition of Forced Labour
- C131 – Minimum Wage
- C138 – Minimum Age
- C144 – Tripartite Consultation

And a first report on the application of:

- C182 – Worst Forms of Child Labour

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.

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 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.

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)

This report regards the period 1 June 2011 to 31 May 2012.

The Government informs the Committee that there are no new developments regarding this Convention since its 2011 report.

Division I - IV

- I. The Government of Aruba informs that no changes have been made to any legislation since the Government's last report.
- 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. The Government refers the Committee to the Foreword of this consolidated report.

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

(Ratification registered on 1 January 1986)

This report regards the period 1 June 2007 to 31 May 2012.

The Government refers the Committee to its 2012 report on the Minimum Age Convention in which detailed information is communicated regarding compulsory education.

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. The Government refers the Committee to the Foreword of this consolidated report.

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 2009 to 31 May 2012.

Observation 2010

Taking into consideration the Committee's past remarks the Government introduced changes for the specific inclusion of labour provisions in public tenders, as it regards products and services tendered by the Public Works Department. As communicated to the Committee in the Government's 2007 report, the Government does not enter into contracts but rather publishes specifications for a specific project to which interested parties submit a bid in accordance with the specification. A tender letter is awarded to which the Uniform General Instructions (UAV) apply. The Government hereby submits a copy of a project specification in which the labour provisions are included. (Annex 1) The Government opted to insert the labour provisions in the specifications as a pre-condition to being awarded the tender as a way to discourage companies not able to comply from submitting a bid in the first place. The Government is aware of the ILO's position that the "insertion of labour clauses in the specifications or general conditions of tender documents is not sufficient to give effect to the basic requirement of the Convention, which is the inclusion of a labour clause as an integral part of the contract" (Practical Guide 2008). However, it is the Government's contention that in Aruba's case, the specifications form an integral part of the public procurement agreement as it is the primary source of reference to demand compliance of the project. Notwithstanding this point, the Government added reference to imposed sanctions of non-compliance in the tender letter, signed by the contractor and the Department of Public Works. (see Annex 2)

The Government informs the Committee that the Convention is also applicable to tenders awarded by the Fondo di Desaroyo Aruba (Aruba Development Fund), a public fund managed by the Aruban Investment Bank, in which governments of both Aruba and the Netherlands deposit equal stake in the fund. Annex 3 is a sample tender letter.

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 refers the Committee to its comments under Observation 2010 of this report.
- VI. The Government refers the Committee to the Foreword of this consolidated report.

PROTECTION OF WAGES CONVENTION, 1974 (no. 95)

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

This report regards the period 1 June 2007 to 31 May 2012.

Direct Request 2007.

Article 4. The Government has given the Committee's comments due consideration and would like to inform the following. Article 1614t of the Civil Code should be interpreted in conjunction with article 1613n, which stipulates the forms in which the wage may be determined: in money or in kind. Mind you however that there is a law regarding Minimum wages where is stated that the wage should be in principle paid in money, making the payment of wages exclusively in kind impossible.

Article 8. The Government informs the Committee that article 1614s complies with the Convention:

- (i) As the deductions mentioned are provided for by a national law, in this case article 1614s of the Civil Code.
- (ii) As it regards the guarantees of the fairness, the employee always has the right to seek mediation from the Labour Department and/or request a judge to test the fairness of the deduction.

The Government informs the Committee that the deductions referred to in the abovementioned provision may be for damages to the employer when, for example, an employee terminates the labour relation without giving proper notice as prescribed by law or agreement or the employee took an advance on vacation days but terminated the labour relation without having earned already paid vacation days. The deduction may also refer to material damage caused to employer property.

Article 10, paragraph 2. Regarding overall limit on attachment wages, the Government informs the Committee that there are no new developments.

Article 12(2), 13(1) and 14. The Government informs the Committee that Aruba's labour legislation makes no reference to final settlements of wage payments because it follows out of articles 1614 jo 1614a of the Civil Code that the wage must be paid to the worker through to the day of termination of the labour relation and in accordance with the interval as stipulated in 1614l . These provisions guarantee the right of payment and within which time frame.

Regarding the payment of wages only on working days and the notification of pay conditions to workers before they enter employment, the Government informs the Committee that certain changes are being made. One of the changes in the Civil Code of Aruba regarding the mode of payment in wages

will be the legal obligation for every employer to provide a pay slip to its employee.

Article 16. The Government kindly refers the Committee to Division V of the Government report on Minimum Wage Fixing (C131) for statistical information regarding inspectors carried out and violations 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 of statistical information available.
- VI. The Government refers the Committee to the Foreword of this consolidated report.

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

(Ratification registered on 18 February 1960)

This report regards the period 1 June 2011 to 31 May 2012.

The Government informs the Committee that there are no new developments regarding this Convention since its 2011 report. However, the Government would like to emphasise, with regards to art. 83b of the Organic Act, that this stipulation has not been applicable for more than 15 years, and is thus a dead letter.

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 and kindly refers the Committee to past reports.
- 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.
- VI. The Government refers the Committee to the Foreword of this consolidated report.

MINIMUM WAGE FIXING, 1970 (no. 131)

(Ratification registered on 18 February 1986)

This report regards the period 1 June 2007 to 31 May 2012.

Direct Request 2007

Articles 1, 2(1) and 4. The Government acknowledges the Committee's remarks and understands this to mean that the Committee considers the situation in Aruba to be in conformity with these provisions of the Convention.

Article 5 and Part V. The Government kindly refers the Committee to information provided below.

Division I - VI

- I. The Government of Aruba informs the Committee that since the Government's last report in 2007, the minimum wage was increased as of the 1st of July 2008, the 1st of July 2009 and the 1st of January 2012 (See Annexes 4, 5 and 6, respectively). The corresponding advice report by the Social Economic Council for each of these increases is also submitted as Annexes 7, 8 and 9, respectively.
- 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.
- V. Statistics:
Please see table below for information on inspections carried out by the labour inspectors. There were no minimum wage violations during the years 2008 to 2010.

	2008	2009	2010
Inspections carried out	720	2541	2418
Minimum wage violations	0	0	0
Penalties imposed	0	0	0

The Government submits herewith tables queried from the 2010 Census regarding wage, disaggregated by sex, age, industry, ISIC, ISCO and education level. (Annexes 10 – 13)

Additionally, the Government submits a table comparing the minimum wages of the private sector with the lower wages in the public sector. (Annex 14) A significant development to note is the wage adjustment as per 1 January 2006 in the public sector, which was an increase of 43,5%. The increase was primarily to bring about equality between the two sectors. After that, the wage adjustment in the amount of Afl. 105 as per 1 January 2008 was the result of a seven-week strike by the public sector demanding a raise (not only for lowest public sector wage earners but across the board, for all wage categories in the public sector). The argument was to adjust the wage for the increase in the cost-of-living index, claiming it as a right. This indexation of the wage, however, is not a right, as was ruled in GAZA nr. 978/2008 by a judge in the Court of First Instance (Annex 15).

MINIMUM AGE CONVENTION, 1973 (NO. 138)

(Ratification registered on 18 February 1986)

This report regards the period 1 June 2011 to 31 May 2012.

Observation 2011

Article 2(3). The Government is pleased to inform the Committee that the Parliament of Aruba approved the State Ordinance on Compulsory Education (SOCE), AB 2011 no. 82. The ordinance was signed into law on 23 December 2011 but has not yet come into force, in accordance with SOCE article 11§1. The Government will inform the Committee when said state decree is enacted. The Government submits herewith a copy of the ordinance (Annex 16) and a copy of the corresponding Explanatory Memorandum (Annex 17).

Education is according to SOCE art. 2§1a and b jo. art. 2§2 compulsory for children of the ages 4 through 16 years and during the hours as set forth by the school for the respective grade level.

The Government is currently in the process of setting up the Bureau on Compulsory Education (BCE) that has the responsibility of enforcing the new law and coordinating said enforcement. The BCE is set to employ:

- 1 Coordinator
- 4 Enforcement officers
- 1 Social Worker
- 1 ICT-engineer
- 1 Administrative assistant
- 1 Housekeeper

After some time the BCE has been operational, the Government will re-evaluate the positions and adjust accordingly.

The first task assigned to the BCE is bringing the necessary awareness to the schools and parents on the new law so that they are well-informed of the new obligations and sanctions in case of non-compliance. This campaign will start for the upcoming new school year 2012-2013. Once the SOCE comes into force, parents will have the obligation to register their child at a school, ensure the child gets to school and in case of absence, inform the school no later than 9:00 am of the fact. Parents may no longer take their child out of school for personal matters or family vacations; explicit permission must be attained from the school for an absent child. Additionally, if a child is absent from school by 9:00 am, the school must contact the parents to inquire about the child's whereabouts. If the school is unable to (re)-establish attendance of the child, the school may report the issue to the BCE. In turn, the BCE may refer the case to other organisations, such as the Department of Social Affairs, Guardianship Council, Labour Inspectorate, Bureau Sostenemi (for physically/sexually abused children), the police, or the Prosecutor.

Parents who are non-compliant in their obligations to ensure their child attends school may be fined Awg. 200 to Awg. 2500. Failure to pay the fine may lead to

detention for up to one month or an additional fine. Parents on government assistance may arrange a payment plan.

Article 3(1) and (2), Article 6 and Article 7. The Government informs the Committee that the specification of hazardous work, light work and exemptions for training to be a competency of the Director of the Labour Department in the changes to the Labour Ordinance has not yet been addressed. The proposal is currently in the hands of the Department of Legislation for technical evaluation and revision, a process demanding the necessary care and time. Once the formulation of the text is approved, the Labour Department will prepare the corresponding policy.

Part V. The Government informs the Committee that no new information on the practical application of the Convention has been communicated to the Committee because there is no new information available. The challenges as communicated in previous reports are still current.

Division I - VI

The Government refers the Committee to the Government's comments under Article 2(3) of the Direct Request.

- I. The Government of Aruba refers the Committee to past reports for the application of the Articles of this Convention.
- II. The Government refers the Committee to previous reports.
- III. There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.
- IV. 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.

TRIPARTITE CONSULTATION (ILS), 1976 (NO. 144)

(Ratification registered on 6 August 1986)

This report regards the period 1 June 2010 to 31 May 2012.

Direct Request 2011

Topics of tripartite consultations during the reporting period are:

- Denunciation of conventions C25, C74, C89, C11 and C12;
- Application of C182 and its compliance ex art. 3 and 4;
- Possible application of C187 and C189.
- Questionnaire Social Security Protection.
- Compliance with C94
- The Government's reports for the period ending May 2010 and 2011 on ILO conventions in accordance with article article 22 of the Constitution of the International Labour Organisation;
- Preparations for the International Labour Conference 2010, 2011 and 2012.
- Replacement of one employer's representative organisation in OCIA.

For information on the challenges of tripartite consultations, the Government refers the Committee to Part V of this report.

Division I – VI

- I. The Government of Aruba refers the Committee to past reports.
- II. The Government of Aruba refers the Committee to past reports for the application of the Articles of this Convention.
- 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. During the reporting period, meetings were held as presented in the table below:

Tripartite Meetings International Labour Affairs 2010 - 2012			
	Meetings called	Meetings held	Meetings cancelled
2012 ¹	5	1	4
2011	9	5	4
2010	12	4	8

¹ Regards January – May 2012.

Cancellation of meetings due to a lack of quorum continues to be a challenge, despite the existence of a previously approved annual schedule of meetings by all members of the tripartite committee OCIA. As was communicated to the

Committee in the Government's last report, at the OCIA members behest, meetings on a monthly basis was re-introduced, yet to no avail.

As the Committee is aware, the Government has been working on its compliance with Convention no.94 for some time. The Government is making every effort to ensure that the social partners, particularly the workers' representatives, are involved in this process.

WORST FORMS OF CHILD LABOUR, 1999 (NO. 182)

Applicable to the country of Aruba since 16 June 2011

First Report

- I. The Government refers the Committee to its comments under Article 3 of this report as it regards the laws and regulations which apply to this convention.
- II. Please see below.

Article 1. From the moment of this Convention's application to Aruba, all relevant legal prohibitions of the worst forms of child labour were already in place. The Government did make efforts to bring awareness of the applicability of this new Convention for Aruba to the various government departments and organisations involved in affairs of minors.

Article 3. The following legal provisions prohibiting the different worst forms of child labour are applicable:

(a) as it regards slavery and slave trade, article 287 of the Penal Code; forced or compulsory labour is prohibited in art. 286a §1a-b and §2. For cases involving children under the age of 16, art. 286a §3 provides grounds for an increase in penalty for the convicted.

(b) as it regards child prostitution and child pornography, art. 286a §1 jo. §2 and §3b of the Penal Code.

(c) as it regards the use of children for illicit activities, art. 49 of the Penal Code.

(d) as it regards work, which by its nature ... is likely to harm the health, safety and morals of children, art. 258 and 264 of the Penal Code are applicable.

(Annex 18)

All legal provisions apply to all genders equally.

The Government reminds the Committee that Aruba is bound to the provisions of the Convention on the Rights of the Child, the Slavery Convention (1926) and the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956).

The Government respectfully refers the Committee to the Government's 2003-2006 report on the Convention on the Rights of the Child for more details.

Article 4.

The Government informs the Committee that the types of work determined in accordance with paragraph 1 of this provision are not yet in effect; the Government will communicate any progress made in this regard at its most early convenience.

In the Government's preparation to request the application of this Convention for Aruba, a number of government departments and organisations were approached for a preliminary investigation on the subject. The investigation concluded in the realisation that 'child labour' was not a preoccupation even in its most minimal sense since most people would contend that child labour does not exist in Aruba.

Additionally, the depth of its meaning was widely unknown and quite inaccurate. Organisations involved with children care and education and certain government departments were educated on the matter and requested to begin a registration of cases where child labour is involved. The foregoing regards the following organisations and government departments.

Government departments	Organisations*
Dept of Social Affairs/Bureau Sostenemi	Fundacion Respetami
Public Prosecutor's Office	Fundacion Guiami
Reclassering	Fundacion Telefon pa Hubentud
Voogdijraad	Fundacion pa nos Muchanan
Jeugd en Zedenpolitie	Stichting Balansa Nobo
Afd. Georganiseerd Misdaad (Korps Politie)	

* See Annex 19 for a description of the organisations.

The Government kindly refers the Committee to the Government's comments to its 2012 report on Convention 144, as it regards the consultations held in accordance with this provision.

Article 5.

As the Government is in its preliminary phase of implementing this Convention, no official mechanism as yet has been established or designated.

As it currently stands, labour inspectors are authorised to perform inspections and monitor the provisions of this Convention.

Article 6.

As the Government is in its preliminary phase of implementing this Convention, no programmes of action have been designed or implemented as yet.

The Government kindly refers the Committee to the Government's comments to its 2012 report on Convention 144, as it regards the consultations held in accordance with this provision. The Government plans to involve many other groups for their consideration on the implementation of programmes of action; these include but are not limited to educational institutions, the newly established bureau for Compulsory Education and association of paediatricians.

Article 7.

The penal sanctions as described in the Government's comments under article 3 of this report are an addition to the Penal Code, amended by AB 2003 no. 47 en AB 2006 no. 11.

Child labour in general is also prohibited in accordance with article 13 of the Labour Ordinance. Any contravention is punishable with a maximum sentence of three months or a maximum fine of Awg. 600, unless less than a two-year period has transpired in which the same contravention took place, then a maximum sentence of six months or a maximum fine of Awg. 1200 may apply.

During the reporting period no individual or enterprise has had any sanction imposed upon them.

The authority responsible for the implementation of the provisions giving effect to this Convention are the labour inspectors. Labour inspectors perform inspections as project-based per sector or area or complaint-based (ad hoc visits).

Article 8.

There have been no steps taken through international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

- III. No courts of law or other tribunals in Aruba have given decisions involving question of principle relating the the application of this Convention.
- IV. One of the greatest challenges for the application of this Convention is the lack of apparent worst forms of child labour in Aruba. It is difficult to design a program catered to a group of which is unclear what specific needs must be met. For this reason, the Government is tackling this issue in broad and general terms by first and foremost increasing awareness on the topic by providing information sessions to those in contact with children and secondly working to introduce a clear protocol for interdepartmental and organisational cooperation for streamlining the process of assistance of recognizing cases of child labour, informing the corresponding authorities, removing the child and finally providing the necessary psychological, medical, and social care, as needed.
- V. There are currently no additional information to be communicated to the Committee that has not already been supplied.

List of Annexes

Annex	Document	Ref.
1	Section on labour provisions of a project Specification for the Department of Public Works	C94
2	Sample tender letter – Government of Aruba	C94
3	Sample tender letter - FDA	C94
4	State Decree AB 2008 no. 41	C131
5	State Decree AB 2009 no. 60	C131
6	State Decree AB 2011 no. 75	C131
7	Report Social Economic Council: minimum wage increase 2008	C131
8	Report Social Economic Council: minimum wage increase 2009	C131
9	Report Social Economic Council: minimum wage increase 2011	C131
10	Census 2010 Table P-J.6. Employed population by gross monthly income from main occupation and branch of industry (ISIC major division)	C131
11	Census 2010 Table P-J.7. Employed population by gross monthly income from main job and major occupational group (ISCO major group)	C131
12	Census 2010 Table P-J.1. Employed population 14 years of age and over by age, sex, and gross monthly income from main job	C131
13	Census 2010 Table P-J.5. Employed population 14 years of age and over by gross monthly income from main job, level of educational attainment and sex	C131
14	Comparison table: Public vs. Private sector minimum wage	C131
15	Court of First Instance decision, GAZA nr. 978/2008	C131
16	State Ordinance on Compulsory Education, AB 2011 no. 82	C138
17	Explanatory Memorandum to AB 2011 no. 82	C138
18	Various provisions from the Penal Code	C182
19	Descriptive overview of foundations dealing with child care and abuse issues	C182