

INTERNATIONAL LABOUR OFFICE GENEVA

REPORT FORM

FOR THE

LABOUR CLAUSES (PUBLIC CONTRACTS) CONVENTION, 1949 (No. 94)

The present report form is for the use of countries which have ratified the Convention. It has been approved by the Governing Body of the International Labour Office, in accordance with article 22 of the ILO Constitution, which reads as follows: “Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.”

The Government may deem it useful to consult the appended text of the Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84), the provisions of which supplement the present Convention and can contribute to a better understanding of its requirements and facilitate its application.

PRACTICAL GUIDANCE FOR DRAWING UP REPORTS

First reports

If this is your Government's first report following the entry into force of the Convention in your country, full information should be given on each of the provisions of the Convention and on each of the questions set out in the report form.

Subsequent reports

In subsequent reports, information need normally be given only:

- (a) on any new legislative or other measures affecting the application of the Convention;

- (b) in reply to the questions in the report form on the practical application of the Convention (for example, statistics, results of inspections, judicial or administrative decisions) and on the communication of copies of the report to the representative organizations of employers and workers and on any observations received from these organizations;

- (c) **in reply to comments by the supervisory bodies:** the report must contain replies to any comments regarding the application of the Convention in your country which have been made by the Committee of Experts on the Application of Conventions and Recommendations or by the Conference Committee on the Application of Standards.
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Article 22 of the Constitution of the ILO

Report for the period _____ to _____

made by the Government of _____

on the

LABOUR CLAUSES (PUBLIC CONTRACTS) CONVENTION, 1949 (No. 94)

(ratification registered on _____)

- I. Please give a list of the legislation and administrative regulations, etc., which apply the provisions of the Convention. Where this has not already been done, please forward copies of the said legislation, etc., to the International Labour Office with this report.**

Please give any available information concerning the extent to which these laws and regulations have been enacted or modified to permit, or as a result of, ratification.

- II. Please indicate in detail *for each of the following Articles of the Convention* the provisions of the abovementioned legislation and administrative regulations, etc., or other measures, under which each Article is applied. In addition, please provide any indication specifically requested below under individual Articles.**

If in your country ratification of the Convention gives the force of national law to its terms, please indicate by virtue of what constitutional provisions the ratification has had this effect. Please also specify what action has been taken to make effective those provisions of the Convention which require a national authority to take certain specific steps for its implementation, such as measures to define its exact scope and the extent to which advantage may be taken of permissive exceptions provided for in it, measures to draw the attention of the parties concerned to its provisions, and arrangements for adequate inspection and penalties.

If the Committee of Experts or the Conference Committee on the Application of Standards has requested additional information or has made an observation on the measures adopted to apply the Convention, please supply the information asked for or indicate the action taken by your Government to settle the points in question.

Article 1

1. This Convention applies to contracts which fulfil the following conditions:
 - (a) that one at least of the parties to the contract is a public authority;
 - (b) that the execution of the contract involves:
 - (i) the expenditure of funds by a public authority; and
 - (ii) the employment of workers by the other party to the contract;
 - (c) that the contract is a contract for:
 - (i) the construction, alteration, repair or demolition of public works;
 - (ii) the manufacture, assembly, handling or shipment of materials, supplies or equipment; or
 - (iii) the performance or supply of services; and
 - (d) that the contract is awarded by a central authority of a Member of the International Labour Organisation for which the Convention is in force.
2. The competent authority shall determine the extent to which and the manner in which the Convention shall be applied to contracts awarded by authorities other than central authorities.

3. This Convention applies to work carried out by subcontractors or assignees of contracts; appropriate measures shall be taken by the competent authority to ensure such application.

4. Contracts involving the expenditure of public funds of an amount not exceeding a limit fixed by the competent authority after consultation with the organisations of employers and workers concerned, where such exist, may be exempted from the application of this Convention.

5. The competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, exclude from the application of this Convention persons occupying positions of management or of a technical, professional or scientific character, whose conditions of employment are not regulated by national laws or regulations, collective agreement or arbitration award and who do not ordinarily perform manual work.

Please indicate to what extent and in what manner the Convention has been applied to the contracts mentioned in paragraph 2 of this Article.

If advantage has been taken of the exceptions provided for under this Article, please indicate (a) what limit of the amount of public funds has been fixed under paragraph 4, and (b) which specific categories of persons have been exempted in virtue of paragraph 5.

Article 2

1. Contracts to which this Convention applies shall include clauses ensuring to the workers concerned wages (including allowances), hours of work and other conditions of labour which 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:

- (a) by collective agreement or other recognised machinery of negotiation between organisations of employers and workers representative respectively of substantial proportions of the employers and workers in the trade or industry concerned; or
- (b) by arbitration award; or
- (c) by national laws or regulations.

2. Where the conditions of labour referred to in the preceding paragraph are not regulated in a manner referred to therein in the district where the work is carried on, the clauses to be included in contracts shall ensure to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than:

- (a) those established by collective agreement or other recognised machinery of negotiation, by arbitration, or by national laws or regulations, for work of the same character in the trade or industry concerned in the nearest appropriate district; or
- (b) the general level observed in the trade or industry in which the contractor is engaged by employers whose general circumstances are similar.

3. The terms of the clauses to be included in contracts and any variations thereof shall be determined by the competent authority, in the manner considered most appropriate to the national conditions, after consultation with the organisations of employers and workers concerned, where such exist.

4. Appropriate measures shall be taken by the competent authority, by advertising specifications or otherwise, to ensure that persons tendering for contracts are aware of the terms of the clauses.

Please indicate (a) the terms of the clauses to be included in contracts and any variations thereof determined in accordance with paragraph 3, and (b) the measures which have been adopted to ensure that persons tendering for contracts are aware of the terms of the clauses.

Article 3

Where appropriate provisions relating to the health, safety and welfare of workers engaged in the execution of contracts are not already applicable in virtue of national laws or regulations, collective agreement or arbitration award, the competent authority shall take adequate measures to ensure fair and reasonable conditions of health, safety and welfare for the workers concerned.

Please indicate the provisions of national laws, regulations, collective agreements or arbitration awards relating to the health, safety and welfare of the workers concerned; and, where no such provisions exist, please give information concerning any measures that have been taken to ensure fair and reasonable conditions in such matters.

Article 4

The laws, regulations or other instrument giving effect to the provisions of this Convention:

- (a) shall:
 - (i) be brought to the notice of all persons concerned;
 - (ii) define the persons responsible for compliance therewith; and
 - (iii) require the posting of notices in conspicuous places at the establishments and workplaces concerned with a view to informing the workers of their conditions of work; and
- (b) shall, except where other arrangements are operating to ensure effective enforcement, provide for the maintenance of:
 - (i) adequate records of the time worked by, and the wages paid to, the workers concerned; and
 - (ii) a system of inspection adequate to ensure effective enforcement.

Please forward specimen copies of the notices and forms of records mentioned in this Article.

Article 5

1. Adequate sanctions shall be applied, by the withholding of contracts or otherwise, for failure to observe and apply the provisions of labour clauses in public contracts.

2. Appropriate measures shall be taken, by the withholding of payments under the contract or otherwise, for the purpose of enabling the workers concerned to obtain the wages to which they are entitled.

Article 7

1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage of development of the area, the competent authority considers it impracticable to enforce the provisions of this Convention, the authority may, after consultation with the organisations of employers and workers concerned, where such exist, exempt such areas from the application of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.

2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation any areas in respect of which it proposes to have recourse to the provisions of the present Article and shall give the reasons for which it proposes to have recourse thereto; no Member shall, after the date of its first annual report, have recourse to the provisions of the present Article except in respect of areas so indicated.

3. Each Member having recourse to the provisions of this Article shall, at intervals not exceeding three years, reconsider in consultation with the organisations of employers and workers concerned, where such exist, the practicability of extending the application of the Convention to areas exempted in virtue of paragraph 1.

4. Each Member having recourse to the provisions of this Article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of this Article and any progress which may have been made with a view to the progressive application of the Convention in such areas.

If this is the first annual report of your Government upon the application of the Convention please indicate any areas which have, in virtue of the authorization given in paragraph 1 of this Article, been excluded, in whole or in part, from the application of the Convention, together with the reason or reasons for their exclusion.

If this is a report subsequent to the first annual report please indicate any areas in respect of which the right to have recourse to the provisions of this Article may have been renounced and the progress which may have been made with regard to the progressive application of the Convention in such areas.

Please also indicate, where appropriate, what steps have been taken to reconsider the practicability of extending the application of the Convention in accordance with paragraph 3 of Article 7.

Article 8

The operation of the provisions of this Convention may be temporarily suspended by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, in cases of *force majeure* or in the event of emergency endangering the national welfare or safety.

Please state whether any suspension of the operation of the provisions of the Convention has been effected during the period covered in the report.

- III. Please state to what authority or authorities the application of the abovementioned legislation and administrative regulations, etc., is entrusted, and by what methods application is supervised and enforced. In particular, please supply information on the organization and working of inspection.
- IV. Please state whether courts of law or other tribunals have given decisions involving questions of principle relating to the application of the Convention. If so, please supply the text of these decisions.
- V. Please give a general appreciation of the manner in which the Convention is applied in your country including, for instance, extracts from official reports and information on any practical difficulties in the application of the Convention.
- VI. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization.¹ If copies of the report have not been communicated to representative organizations of employers and/or workers, or if they have been communicated to bodies other than such organizations, please supply information on any particular circumstances existing in your country which explain the procedure followed.

Please indicate whether you have received from the organizations of employers or workers concerned any observations, either of a general kind or in connection with the present or the previous report, regarding the practical application of the provisions of the Convention or the application of the legislation or other measures implementing the Convention. If so, please communicate the observations received, together with any comments that you consider useful.

¹ Article 23, paragraph 2, of the Constitution reads as follows: "Each Member shall communicate to the representative organisations recognised for the purpose of article 3 copies of the information and reports communicated to the Director-General in pursuance of articles 19 and 22."

APPENDIX

LABOUR CLAUSES (PUBLIC CONTRACTS) RECOMMENDATION, 1949 No. 84

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 Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning labour clauses in public contracts, which is the sixth item on the agenda of the session, and

Having decided that these proposals shall take the form of a Recommendation supplementing the Labour Clauses (Public Contracts) Convention, 1949,

adopts this twenty-ninth day of June of the year one thousand nine hundred and forty-nine the following Recommendation, which may be cited as the Labour Clauses (Public Contracts) Recommendation, 1949:

The Conference recommends that each Member should apply the following provisions as rapidly as national conditions allow and report to the International Labour Office as requested by the Governing Body concerning the measures taken to give effect thereto:

1. In cases where private employers are granted subsidies or are licensed to operate a public utility,

provisions substantially similar to those of the labour clauses in public contracts should be applied.

2. Labour clauses in public contracts should prescribe, either directly or by reference to appropriate provisions contained in laws or regulations, collective agreements, arbitration awards or other recognised arrangements:

- (a) the normal and overtime rate of wages (including allowances) to be paid to the various categories of workers concerned;
- (b) the manner in which hours of work are to be regulated, including wherever appropriate:
 - (i) the number of hours that may be worked in any day, week or other specified period in respect of which normal rates of wages are to be paid;
 - (ii) the average number of hours that may be worked by persons working in successive shifts on continuous processes; and
 - (iii) where hours of work are calculated as an average, the period of time over which this average may be calculated and the normal maximum number of hours that may be worked in any specified period;
- (c) holiday and sick leave provisions.