

Report by the Government of Aruba - 2006 -



in accordance with 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 ILO, a simple report on the application of the following Conventions (C11, C12, C25, C87, C113, C114, C118, C121, C122, C126, C144) for period 31 May 2002 to 31 May 2006.

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. The Government did not receive any comments regarding any Convention from these organisations nor did the Government receive any notice that they would wish to send their comments at a future time.

Right of Association (Agriculture) Convention 1921, (no. 11)

(Ratification registered by the Netherlands Antilles on 15 December 1955 and applicable to the country of Aruba as per 1 January 1986)

The Government informs the Committee that the denunciation of this Convention has been discussed in the trilateral committee on international labour affairs (OCIA) consisting of nine delegates, where the most representative organisations of employers¹ (3), workers² (3) and the Government³ (3) are represented. The Committee agreed for the denunciation of this Convention.

Division I - VI

The Government of Aruba informs the Committee that no changes have been made to any legislation during the reporting period regarding the rights of association in the agriculture industry 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 neither statistics available nor have there been reports made regarding the application of this Convention.

Copies of this report were communicated to the following organisations:

The employer's organisations:

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

The worker's organisations:

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

¹ The Aruba Hotel and Tourism Association, the Aruba Trade & Industry Association and Associated General Contractors of Aruba represent the employer's organisations.

² The Federation of Workers of Aruba, the Union of Public and Private Employees of Aruba and the Aruba Union of Nurses represent the worker's organisations.

³ The Department of Labour and Research, the Department of Legislation and the Department of Social Affairs represent the Government.

Workmen's Compensation (Agriculture) Convention 1921, (no. 12)

(Ratification registered by the Netherlands Antilles on 15 December 1955 and applicable to the country of Aruba as per 1 January 1986)

The Government informs the Committee that denunciation of this Convention has been discussed in the trilateral committee on international labour affairs (OCIA), where the most representative organisations of employers, workers and the Government are represented. The Committee agreed for the denunciation of this Convention.

Direct Request 1999

The Government confirms that agricultural workers are entitled, in case of occupational accidents, to benefits provided for by the legislation on compensation for occupational accidents. The Government refers the Committee to the amended State Ordinance Accident Insurance (Annex 1) submitted to the Committee with this report and to the Government's Report on Employment Injury Benefit (no.121) regarding the changes in the amended State Ordinance Accident Insurance. As stipulated under article 1 whereas the ordinance lists those instances/professions for which the ordinance is not applicable, agricultural workers do not fall under this category. The exception which this article provides are for those agricultural workers in service of the Government. Agricultural workers in service of the Government are covered for accidents by the stipulations according to the Organic Act of Public Servants (art. 45a), which refers to the State Ordinance Accident Insurance for the same applicability of the benefits in certain cases.

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 or have there been reports made regarding the application of this Convention.

Copies of this report were communicated to the following organisations:

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

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)

The Government informs the Committee that the denunciation of this Convention has been discussed in the trilateral committee on international labour affairs (OCIA), where the most representative organisations of employers, workers and the Government are represented. The Committee agreed for the denunciation of this Convention.

Direct Request 2005

Article 3. The Government informs the Committee that the parliament of Aruba accepted a motion (Annex 2) on 21 January 2005 to remove also the benefit inequality in the Sickness Insurance. Before the motion was accepted the workers who are not considered as breadwinner and not married would have received 70 per cent of their daily wage. The term breadwinner refers to the individual (male or female) who has the highest income in a household. To this end, the Government would like to mention that the legislation did not differentiate between workers on the basis of their sex, but on the basis of their income. Differentiation on the basis of income is no longer an issue.

Division I – V

The Government submits a copy of the amended State Ordinance General Sickness Insurance (Annex 3) and the texts of the following articles that have been changed:

- Article 2: (new); formalisation of the general medical costs fund, including its legal position/status.
- Article 2a: (new); authority to the Minister of Public Health to instruct the administrative organisation in charge of the general medical insurance (AZV administration) of changes and new policies.
- Article 2b: formalisation to which entity the AZV administration is responsible.
- Article 3: eligibility to coverage made more stringent
- Article 13a: (new); Speech therapy coverage made possible, extent of coverage to be determined by state decree.
- Article 18: oral hygiene coverage made possible, extent of coverage to be determined by state decree.
- Article 20: medical coverage abroad awarded as stipulated in a state decree.
- Article 22§2: removal of the section of the text in which the AZV administration may also object to reducing coverage.
- Article 24§3: (new); obligatory proof of eligibility to coverage required for medical assistance.
- Article 24§4: (new); medical assistance prohibited for those whose identity cannot be established.
- Article 24§5: (new); Exception to 24§3 and 24§4 in life threatening circumstances.
- Article 25§1: when, where and how regarding medical assistance abroad regulated.
- Article 25§2: regulation should the patient wish to be treated at another facility other than those partnered with the AZV administration.
- Article 25§3: Authority to the Minister to broaden the list of countries where patients may receive medical assistance abroad.

The Council

Article 27: (new) The responsibilities of the Council (previously the Board of the AZV administration).

Article 27a: (previously article 30) the number of members of the Council have been reduced; authority to the Minister to appoint the members.

The remaining provisions of this chapter have minor changes introduced and concern for the most part the Council members' legal position.

The Premium

Article 38b: The premium is no longer derived from the taxable income but from the gross income.

Article 38l: the previously in a state decree stipulated percentages are now directly introduced in the ordinance.

Article 38o§4: complaints regarding the taxable income are now permissible via de Lar. The Government refers the Committee to the Government's report in 2002 for information on the Lar procedures.

Article 38p: changes made regarding the budget and the Government's payments to the AZV administration.

Article 38q: changes made to liquidity shortages and the possibility of loans.

Article 38r: (new) regulations for persistent budget shortages.

Article 38s: (new) Authority to the minister to seek a loan to cover the budget shortages.

The Contracts

Article 39§2: (new sub article f) Standard treatment regulations and protocols shall also be included in contracts with medical practitioners.

Article 41§2: (new) For the state decree as referred to in §1, the Minister obtains expert advice from the Council. Contrary decisions must be motivated.

Article 42: Authority to the Minister to determine whether a contract with a medical practitioner that has stipulations against the ordinance will be submitted for nullification before the Court of First Instance.

Information

Article 43§2: (new) Information to be given to the AZV by the police of instances where injury has been reported.

Article 43a: (new) Injury inflicted to an insured person consequent a wrongful act must be reported as such to the AZV by the insured and the treating medical institution/practitioner.

Article 43b: (new) Authority to AZV administration to request information and the obligation to all to give information, which may result in disregard of the pledge of secrecy.

Penalty clause

Article 48§3: The criminal act in §1 is a felony; that of §2 is a misdemeanour.

Article 49§1: The penalty imposed is raised to Afls. 2500,=.

The Government also submits a copy of the amended State Ordinance Sickness Insurance (Annex 4). The Government informs the nature of the changes:

- The Social Insurance Bank has been given the authority to collect the sickness insurance premium and the authority to stipulate administrative penalties in case the premium has not been paid nor has been paid on time.
- The representative and any executive director of the employer are severally liable for the indebted payment of the sickness insurance premium and the administrative penalties.
- As per January 1st 2006, the maximum salary for which sickness insurance is awarded was increased from AWG. 4108,- to AWG. 4264,-.
- The sickness insurance premium of 4% was reduced to 2,65% (Annex 5). This change has not been updated yet in the amended State Ordinance Sickness Insurance submitted in annex 3 to the committee with this report.

The Government also refers the committee to the motion adopted by the parliament of Aruba (Annex 2). Regarding the changes of the percentage benefit for Sickness Insurance the motion stipulates the following:

"All insured persons, regardless of whether he or she is wed and or the breadwinner, will receive 80% benefit of his or her daily wage for Sickness Insurance and will also receive 80% of his or her daily wage during hospitalisation."

The Government indicates that regarding the Sickness Insurance the motion also stipulates the number of weeks for the maternity leave to 12 weeks.

The Government emphasizes that it is a motion that has been adopted and not the law that has been changed. The concept legislation is being drawn up and will be presented to the Parliament soon. The Government indicates that as per July 1st 2005 the Social Insurance Bank in advance of the concept legislation does apply within the scope of the sickness insurance the following changes as policy:

- 80% benefit of his or her daily wage and 80% of his or her daily wage during hospitalisation.
- the number of weeks for maternity leave to a total of 12 weeks starting from 6 to 4 weeks prior to the due date.
- 100% benefit of her daily wage during the maternity leave.

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.

Copies of this report were communicated to the following organisations:

The employer's organisations:

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

The worker's organisations:

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

Freedom of Association and the Protection of the Right to Organise Convention 1948 (no. 87)

(Ratification registered by the Netherlands Antilles 25 June 1951 and applicable to the country of Aruba as per 1 January 1986)

Observation 2005 and Direct Request 2005

The Government refers the Committee to the Report by the Government of Aruba (2005) in which the Government addressed the Committee's Observation and Direct Request. The Government will await the Committee's evaluation.

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

Copies of this report were communicated to the following organisations:

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:

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

Medical Examination (Fishermen) Convention 1959 (no. 113)

(Ratification registered on 15 December 1989)

Direct Request 2005

The Government acknowledges the Committee's remarks. The Government will consider in the future if the Convention continues to serve any useful purpose. The Government assures the Committee that the Government will take appropriate measures.

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

Copies of this report were communicated to the following organisations:

The employer's organisations:

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

The worker's organisations:

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

Fishermen's Articles of Agreement Convention 1959 (no. 114)

(Ratification registered on 18 February 1986)

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

Copies of this report were communicated to the following organisations:

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:

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

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 of Aruba kindly refers the Committee to the Government's report on changes made to:

- Sickness Insurance (Agriculture) Convention (no.25);
- Employment Injury Benefits Convention (no.121).

There have been no other changes 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 neither statistics available nor have there been reports made regarding the application of this Convention.

Copies of this report were communicated to the following organisations:

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:

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

Employment Injury Benefits Convention 1964 (no. 121)

(Ratification registered on 6 August 1986)

Division I - VI

The Government refers the Committee to the amended State Ordinance Accident Insurance (Annex 1) submitted to the Committee with this report.

The Government informs the nature of the changes:

- The Social Insurance Bank has been given the authority to collect the accident insurance premium and the authority to stipulate administrative penalties in case the premium has not been paid, nor has been paid on time.
- The representative and any executive director of the employer are severally liable for the indebted payment of the accident insurance premium and the administrative penalties.
- As per January 1st 2006, the maximum salary for which accident insurance is awarded was increased from AWG. 4108,- to AWG. 4264,-.

The Government of Aruba also refers the Committee to the motion adopted on July 1st 2005 (Annex 2). Regarding the Accident Insurance the motion stipulates the following: "unwed persons will receive 80% benefit of his or her daily wage for accident insurance during hospitalisation."

The Government emphasises that it is a motion that has been adopted and not a law that has been changed. The concept legislation is being drawn up and will be presented to the Parliament soon. The law would permanently remove all distinctions of the marital status and whether the person is the breadwinner.

The Government indicates that in advance of the changes in the concept legislation of the State Ordinance Accident Insurance, the Social Insurance Bank of Aruba, on behalf of the Government of Aruba, decided to adapt their policy. As per July 1st 2005 all person whether she or he is wed and or the breadwinner will receive 100% benefit of his or her daily wage for the first 52 weeks of incapacitation caused by an accident at work and 80% subsequent for the duration of the disability.

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. The Government refers the Committee to the attachments to this report.

Copies of this report were communicated to the following organisations:

The employer's organisations:

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

The worker's organisations:

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

Employment Policy Convention 1964 (no. 122)

(Ratification registered by the Netherlands Antilles on 9 January 1968 and applicable to the country of Aruba as per 1 January 1986)

Direct request 2005

The Government refers the Committee to the Report by the Government of Aruba (2005) in which the Government addressed the Committee's Direct Request. The Government will await the Committee's evaluation.

Division I – VII

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

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.

Copies of this report were communicated to the following organisations:

The employer's organisations:

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

The worker's organisations:

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

Accommodation of Crews (Fishermen) Convention 1966 (no. 126)

(Ratification registered on 18 February 1986)

The Government informs the Committee that the denunciation of this Convention has been discussed in the trilateral committee on international labour affairs (OCIA), where the most representative organisations of employers, workers and the Government are represented. The Committee agreed for the denunciation of this Convention.

Division I - VI

The Government of Aruba informs the Committee 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 neither statistics available nor have there been reports made regarding the application of this Convention.

Copies of this report were communicated to the following organisations:

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:

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

Minimum Age Convention, 1973 (no. 138)

(Ratification registered on 18 February 1986)

Observation 2005 and Direct Request 2005

The Government refers the Committee to the Report by the Government of Aruba (2005) in which the Government addressed the Committee's Observation and Direct Request. The Government will await the Committee's evaluation.

Copies of this report were communicated to the following organisations:

The employer's organisations:

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

The worker's organisations:

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

Tripartite Consultation (International Labour Standards) Convention 1976 (no. 144)

(Ratification registered on 6 August 1986)

Observation 2005

The Government refers the Committee to the Report by the Government of Aruba (2005) in which the Government addressed the Committee's Observation. The Government will await the Committee's evaluation.

Division I - VI

The Government of Aruba informs the Committee 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 neither statistics available nor have there been reports made regarding the application of this Convention.

Copies of this report were communicated to the following organisations:

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:

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

Continuity of Employment (Seafarers) Convention 1976 (no. 145)

Observation 2005

The Government acknowledges the Committee's remarks and assures the Committee that the Government is taking the necessary steps for effective consultations in tripartite. The Government kindly refers the committee to the Government's report 2005 Annex XII.

Copies of this report were communicated to the following organisations:

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

Seafarer's Annual Leave with Pay Convention 1976 (no. 146)

Direct Request 2005

The Government informs the Committee that there have been no modifications in law or in practice regarding this Convention.

Copies of this report were communicated to the following organisations:

The employer's organisations:

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

AGCA
AHATA
ATIA

The worker's organisations:

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

ABV
FTA
SEPPA

Merchant Shipping (Minimum Standards) Convention 1976 (no. 147)

Direct Request 2005

The Government informs the Committee that there have been no changes in law or in practice regarding this Convention.

Copies of this report were communicated to the following organisations:

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:

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

Annexes

- Annex 1. State Ordinance Accident Insurance
Landsverordening Ongevallenverzekering
- Annex 2. Parliamentary motion
Staten Motie
- Annex 3. State Ordinance General Sickness Insurance
Landsverordening Algemene ziektekostenverzekering
- Annex 4. State Ordinance Sickness Insurance
Landsverordening ziekteverzekering
- Annex 5. State Decree AB 2005 no.87
Landsbesluit AB 2005 no.87