

Report by the Government of Aruba - 2008 -



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

Versie F5

Table of Contents

Foreword.....	ii
Weekly Rest (Industry), 1921 (no. 14)	1
Direct Request, CEACR 2003 / 74 th Session	1
Division I - VI.....	2
Freedom of Association and the Protection of the Right to Organise, 1948 (no. 87).....	3
Observation 2006, CEACR 2006 / 77 th Session	3
Direct Request, CEACR 2006 / 77 th Session	3
Division I - VI.....	4
Night Work (Women), 1948 (no. 89)	5
Direct Request, CEACR 2004 / 75 th Session	5
Division I - VI	5
Holidays with Pay (Agriculture), 1952 (no. 101).....	6
Observation, CEACR 2004 / 75 th Session	6
Division I - VI.....	6
Weekly Rest (Commerce and Offices), 1957 (no. 106)	7
Direct Request, CEACR 2003 / 74 th Session	7
Division I - VI.....	7
Paid Education Leave, 1974 (no. 140).....	8
Direct Request, CEACR 2003 / 74 th Session	8
Division I - VI.....	8
Human Resources Development, 1975 (no. 142).....	9
Direct Request, CEACR 2004 / 75 th Session	9
Division I - VII.....	9
Tripartite Consultation (International Labour Standards), 1976 (no. 144).....	10
Observation, CEACR 2006 / 77 th Session	10
Division I - VI.....	11
List of Annexes	12

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:

- C014 – Weekly Rest (Industry)
- C087 – Freedom of Association and the Protection of the Right to Organise
- C089 – Night Work (Women)
- C101 – Holidays with Pay (Agriculture)
- C106 – Weekly Rest (Commerce and Offices)
- C140 – Paid Educational Leave
- C142 – Human Resources Development
- C144 – Tripartite Consultation (International Labour Standards)

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 and Recommendation, the Government of Aruba will supply in this report the information asked or indicate the action take 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 Association of Employers in the Aruban Building Industry | WAB |

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 |

When the report was sent to another representative organisation not here forth listed, the Government notes this in the corresponding report.

The Government informs the Committee that none of the representative organisations of either the workers or employers commented on the content of this report nor have they expressed the need to comment at a later time.

WEEKLY REST (INDUSTRY), 1921 (NO. 14)

(Ratification registered by the Netherlands Antilles on 14 July 1965 and applicable to the country of Aruba as per 1 January 1986)

Direct Request, CEACR 2003 / 74th Session

Article 2 sub 1a, b and d of State Decree I. The Government submits its policy (Annex 1) as stipulated by the Labour Department with regard to this decree. According to this policy, all workers who fall under the provisions of State Decree I may work a maximum of normal working hours of eight hours per day and a maximum of 48 hours per week, in a six-day workweek – excluding overtime. The policy also grants the worker the fourth Sunday free from labour during a period of four weeks. Article 3 of State Decree I permits a maximum of 64 hours including overtime in any given six-day workweek, calculated over a period of four weeks. This means that the average working hours must be 64 hours in a week. In practice, the Government leaves it at the discretion of the employer to award rest periods at a time that is convenient for the continuation of the business. Workers can therefore work very long hours per day, as long as the weekly average does not surpass 64 hours. The provision in article 3 of State Decree I also stipulates that its provisions are subject to the obligations of article 7 of the Labour Ordinance. As the Committee recalls, paragraph 2 of article 7 allows a worker to perform labour, including overtime, for no more than eleven hours per day and 55 hours per week. While State Decree I removes the obligations of the Labour Ordinance as it regards working hours, rest periods and rest days for certain categories of workers and the permissibility of performing labour for the youth and women, it also reinstates the obligation of article 7 of the Labour Ordinance for a daily maximum of eleven hours.

Because of the contradiction in these provisions, petitions for overtime are handled according to the policy set forth by the Labour Department, maintaining the partial provision of article 3 of an average weekly maximum of 64 hours, no daily maximums and the fourth Sunday free.

The Government is aware of these contradicting provisions and has made efforts to remedy the situation. As the Committee is aware, the labour legislation has been under review by a tripartite committee since July 2004. After completing part of its work as it regarded its recommendations for the Labour Ordinance, the Government instituted a technical committee by state decree to formulate the text laws. This latter committee also formulated changes to the Seventh Chapter of the Civil Code. The Government is pleased to inform the Committee that the text of the revised Labour Ordinance and the revised provisions of the Seventh Chapter of the Civil Code, in which the contradictory provisions, among others, are removed, will presumably be submitted to the Parliament at the end of this year; the exact time of **submission** is contingent upon the order of succession of other bills currently under discussion.

As it regards work of managerial staff and staff of higher income groups, the Government informs the Committee that there are no provisions which guarantee compensatory rest to individuals who earn a gross annual salary of Awg. 32.214 (US\$ 18.408) or more. The Government believes that individuals with that salary,

predominantly those occupying managerial positions, are in an advantageous position and are expected to have the knowledge, disposition and means to competently negotiate contractual protection for themselves.

As it regards work in virtue of sub c, the Government refers the Committee to article 519 of the Commercial Code which obligates the captain to arrange labour according to the existing legal regulations in a labour contract. This includes rest periods.

In addition, the Government informs the Committee that Aruba does not have any inland waterways on which passengers or goods are transported. Therefore the stipulation in article 2 sub 1c does not have application on any existing situations.

Division I - VI

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

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

Statistics:

The Government submits the following table of overtime permit request granted (includes commerce and offices) for the years 2004 through 2007 for the Committee's review.

	2004	2005	2006	2007
Overtime permits granted	349	297	376	451

Copies of this report were submitted to the representative employers' and workers' organisation as stated in the foreword.

FREEDOM OF ASSOCIATION AND THE PROTECTION OF THE RIGHT TO ORGANISE, 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 2006, CEACR 2006 / 77th Session

Article 3. The Government takes note of the Committee's remarks in which the Committee recalls the Government's 1992 report in which the Government acknowledged that strikes by public employees, including teachers in the public sector, were forbidden by law.

The Government informs the Committee that in the Government's 1992 report, the Government made no such acknowledgements. However, the Government in its 1990 report stated that strikes by public employees were prohibited. The Government now recants said statement and communicates to the Committee that the 1990 statement was made in error. At no time in the history of Aruba were strikes by employees in the public or private sector prohibited by law. The right to strike is laid down and guaranteed in article I.13 of the Constitution of Aruba. As a result, any legislation or policy in contravention of any rights awarded by the Constitution would be null and void.

As the Government mentioned in its most recent report, the cited articles of the Penal Code and the Organic Act of Public Servants have no bearing on the question of strikes by public officials. For this reason, any review of the Penal Code would not conclude in any changes as the Committee envisioned.

Direct Request, CEACR 2006 / 77th Session

The Government acknowledges the Committee's request to take the necessary measures, including through adoption of legal provisions, which would ensure that the authorisation for holding public meetings in the specific areas could be denied only when it is feared that serious disturbance might occur and public order is threatened. In this regard the Government stresses that article 5 of the State Ordinance AB 1999 GT2 is clear in specifying when the right to demonstrate can be limited according to sections a through c from the same article, and that is when public order is disturbed or there exists a severe threat of said disturbance.

The Committee also requests the Government to take the necessary measures for the authorities responsible for public order to reach an agreement with the organisers of a meeting concerning the place where it can be held and the manner in which it can take place. The Government assures the Committee that the authorities responsible suggest other times and places, however, taking into consideration the small size of Aruba, any change in venue might make the purpose of the demonstration moot.

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 and the manner in which the Government ensures the free exercise of the right to organise.

The Government submits a court ruling (Annex 2) regarding a most recent mass strike by public employees, in which the Court of First Instance confirmed the lawfulness of the strike. The judge did specify, in lieu of responsible absences, that certain government departments/officials must have a minimal presence. After a seven-week strike and additional appearance before the Court, the parties reached an agreement. At the time of submission of this report, this latter official decision was not yet published.

The Government submits statistics regarding strikes during the reporting period in Annex 3.

Copies of this report were also sent to:

The employer's organisations:

- The San Nicolas Business Association SNBA

The worker's organisations:

- Industrial Oil Workers Union of Aruba IOWUA
- The Union of Immigration Employees of Aruba SADA
- Teacher's Union of Aruba SIMAR
- The Union of Fire-fighters of Aruba SIMBA
- The Union of WEB Aruba SIWA
- The Police Corps Union of Aruba SPA
- The Union of Telecommunications Employees STT
- Trahadornan Organisa P A TOPA
- Union of Electricians of Aruba (N.V. ELMAR) UEA

NIGHT WORK (WOMEN), 1948 (NO. 89)

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

Direct Request, CEACR 2004 / 75th Session

In the Government's effort to promote equality between men and women workers, the Government is in the process of reviewing any labour legislation limiting women's participation in the workforce, including work in industries. In doing so, the Government is also keeping in mind that the protection of women, in particular as it regards pregnancy, does not constitute discrimination. The tripartite committee established for the review of all of Aruba's labour legislation has completed part of its work whereafter the Government instituted a technical committee by state decree to formulate the text laws. Parliament will presumably receive the bill for review at the end of this calendar year. In addition, the prohibition of women to perform labour at night as stipulated in article 17 of the Labour Ordinance has not been applicable for over a decade. The Government proposed its complete removal in the new text law.

In regards to the protection of women, the Parliament of Aruba adopted a change in the Civil Code of Aruba on 15 August 2007 as it concern the articles on pregnancy but did not include any prohibition for (pregnant) women to perform labour, whether or not at night, as the provisions of this Convention would require. The Government would not support such a prohibition either and would rather leave questions of health and ability to work to the health practitioners. Should a doctor deem a pregnant woman unable to perform labour, she will then be awarded sick leave according to the State Ordinance Sickness Insurance.

The Government notes with interest the Committee's request to give favourable consideration to the ratification of either Convention no. 171 or the 1990 Protocol to Convention no. 89. The Government commits to examining and analysing the obligations set forth in the afore-mentioned Convention and Protocol and will communicate to the Committee any decisions made in regard to the adoption.

Division I - VI

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

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

The Government regrets not having any reports or statistical data concerning this Convention.

Copies of this report were submitted to the representative employers' and workers' organisation as stated in the foreword.

HOLIDAYS WITH PAY (AGRICULTURE), 1952 (NO. 101)

(Ratification registered by the Netherlands Antilles on 2 June 1964 and applicable to the country of Aruba as per 1 January 1986)

Observation, CEACR 2004 / 75th Session

The Government acknowledges the Committee's observation.

Division I - VI

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

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

The Government regrets not having any reports or statistical data concerning this Convention.

Copies of this report were submitted to the representative employers' and workers' organisation as stated in the foreword.

WEEKLY REST (COMMERCE AND OFFICES), 1957 (NO. 106)

(Ratification registered by the Netherlands Antilles on 8 October 1972 and applicable to the country of Aruba as per 1 January 1986)

Direct Request, CEACR 2003 / 74th Session

The Government is committed to ensuring that all employees are treated fairly and that all employers abide by the provisions of Aruba's labour laws. In this regard, inspections are performed and any employer not in compliance with its obligations will receive either a warning or a fine, depending on the number of times the same company committed an infraction.

In the course of 2006 and 2007, the Government launched an extensive informative campaign, through the written media, informing the public in general of the rights and obligations of employees and employers and also to what extent the Department of Labour can assist in labour conflicts. With this campaign, the Government hopes to educate the public so that employers would be informed as to their obligations for wage payments, employee safety and hours of work. Employees on the other hand would also be informed giving them the necessary knowledge to act when they discover that their employer is not acting according to the law.

Division I - VI

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

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

Statistics:

The Government submits the following table of overtime permit requests granted (includes industry) for the years 2004 through 2007 for the Committee's review.

	2004	2005	2006	2007
Overtime permits granted	349	297	376	451

Copies of this report were submitted to the representative employers' and workers' organisation as stated in the foreword.

PAID EDUCATION LEAVE, 1974 (NO. 140)

(Ratification registered on 18 February 1986)

Direct Request, CEACR 2003 / 74th Session

Article 5 of the Convention. The Government kindly refers the Committee to the information provided in previous reports.

Article 2, 3 and 6 of the Convention. The Government refers the Committee to previous reports. However, the Government provides in this report two recent examples of provisions laid down in collective working agreements in the private sector where education and training are provided with the formulation and application of a possible introduction of a policy for the promotion of paid educational leave. See Annex 4.

Article 11 of the Convention. The Government refers the Committee to previous reports.

Division I - VI

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

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

The Government regrets not having any reports concerning this Convention but informs the Committee that as it regards the public sector, there are 25 Aruban public servants – of which nine are men and 16 are women – on paid education leave in the Netherlands.

The provisions of this Convention have not been applied.

Copies of this report were submitted to the representative employers' and workers' organisation as stated in the foreword.

HUMAN RESOURCES DEVELOPMENT, 1975 (NO. 142)

(Ratification registered on 6 August 1986)

Direct Request, CEACR 2004 / 75th Session

Article 1, paragraphs 1-4; Article 1, paragraph 5; Article 3, paragraph 1. The Government kindly refers the Committee to previous reports.

Article 5. In 2006 and 2007 conversations took place in order to bring new life to the CELA. The role of the CELA is of large interest considering:

- the present developments in education;
- the job market;
- the importance of the link between the needs of the businesses and the education necessary to match those needs.

The Government of Aruba will keep the Committee informed of any measures taken ensuring the cooperation of employers' and workers' organisations in the formulation and implementation of vocational guidance and vocational training policies and programmes.

Regarding practical statistical information on the activities on the application of this convention. The Government attaches copies of the recent reports by the Education for Employment for the years 2005, 2006 and the first half of 2007. See Annexes 5, 6 and 7, respectively.

Division I - VII

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

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

In regards to the application of this Convention, no assistance or advice through technical cooperation were received for which the ILO was the executing agency.

The Government regrets not having any reports concerning this Convention.

Copies of this report were submitted to the representative employers' and workers' organisation as stated in the foreword.

**TRIPARTITE CONSULTATION (INTERNATIONAL LABOUR STANDARDS), 1976
(NO. 144)**

(Ratification registered on 6 August 1986)

Observation, CEACR 2006 / 77th Session

Regarding strengthening social dialogue. The Government acknowledges the Committee's comments and informs the Committee that Aruba is making efforts to develop effective tripartite consultation. For the period September 2005 through May 2007, the tripartite committee for international affairs (OCIA) held its meetings on: 13 September 2005, 11 October 2005, 8 November 2005, 31 January 2006, 14 March 2006, 11 April 2006, 22 August 2006, 19 September 2006, 13 February 2007 and 16 April 2007.

Topics of the discussion during the OCIA meetings were:

- The Governments reports on ILO Conventions for the period ending may 2005, 2006 and 2007;
- Ratifications of Conventions C134, C163, C166, C178, C184, C139, C167, C185 and R195;
- Denunciation of Conventions C9, C11, C12, C22, C23, C25, C126, and C137;
- Presentation and communicated information on Conventions: C32, C115, C152 and C155;
- Discussion regarding Instrument for amendment of Constitution of the ILO during its 85th session on 19 June 1997,
- 95th and 96th Session of the International Labour Conference in Geneva.

The State Decree Tripartite Committee for International Labour Affairs of 12 August 2003, no. DJAZ/114 was amended on 23 May 2006 to replace the OCIA representative employer's organisation "Werkgeversvereniging Arubaanse Bouwnijverheid (WAB)" with the "Associated General Contractors of Aruba (AGCA)" for a lack of a suitable candidate under its members to attend the meetings. See Annex 8.

Article 5, paragraph 1. The OCIA schedules at most four tripartite consultations annually, reserving the right to call extra meetings when the need arises. This measure was taken in order to achieve a structured consultation and active participation on scheduled meetings. Each OCIA member receives all necessary documentation in advance for his or her review.

The OCIA representative organisations of employers and workers will further provide, consult and share relevant information to fellow organisations of employers and workers on actions that have been taken or are to be taken.

Division I - VI

The Government of Aruba informs the Committee that besides the amended decree as mentioned under the Direct Request, no other changes have been made to any legislation during the reporting period and refers the Committee to past reports for the application of the articles of this Convention and for information regarding to what authorities the application of this Convention is entrusted.

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 submitted to the representative employers' and workers' organisation as stated in the foreword.

LIST OF ANNEXES

		Convention	Page
Annex 1	Policy Labour Department State Decree I	C014	1
Annex 2	Court of First Instance decision	C087	4
Annex 3	Statistics Strikes	C087	4
Annex 4	Collective Working Agreements – section on paid education leave	C140	8
Annex 5	Report by Enseñansa pa Empleo, 2005	C142	9
Annex 6	Report by Enseñansa pa Empleo, 2006	C142	9
Annex 7	Report by Enseñansa pa Empleo, first half 2007	C142	9
Annex 8	Copy State Decree Tripartite Committee for International Labour Affairs, 23 May 2006	C144	10