

REPORT BY
THE GOVERNMENT
OF ARUBA
~2009~



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

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Foreword

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

- C029 – Forced Labour
- C081 – Labour Inspection
- C088 – Employment Service
- C094 – Labour Clauses (Public Contracts)
- C105 – Abolition of Forced Labour
- C135 – Workers’ Representatives
- C138 – Minimum Age

And a detailed report on the application of:

- C122 – Employment Policy

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

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

The employer’s organisations:

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

The worker’s organisations:

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

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.

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 2007 to 31 May 2009.

Direct Request 2007

Articles 1(1) and 2(1). The Government regrets to inform the Committee that no progress has been made in this regard.

Article 2(2)(c). The Government kindly refers the Committee to the text of the State Ordinance Penitentiary Regulations (AB 2005 no. 75) approved by the Parliament of Aruba on 13 December 2005 (Annex 1). According to the first paragraph of the final provision of said ordinance, the ordinance will come into force at the time it is laid down by an ordinance in which also the introductory and transitional decrees are arranged. Because neither the latter-mentioned ordinance nor the decrees have been created, ordinance AB 2005 no. 75 has not yet come into force.

Article 25. The Government informs the Committee that during the reporting period no complaints related to forced labour have been submitted to the Labour Department nor have there been any legal proceedings instituted as a consequence of the illegal exaction of forced or compulsory labour.

Division I - IV

- I. The Government of Aruba informs the Committee that no changes have been made to any legislation during the reporting period.
- II. The Government of Aruba refers the Committee to past reports for the application of the Articles of this Convention.
- III. There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.
- IV. The Government refers the Committee of Experts to past reports.

Labour Inspection Convention, 1947 (no. 81)

(Ratification registered by the Netherlands Antilles on 15 September 1952 and applicable to the country of Aruba as per 1 January 1986)

This report regards the period 1 June 2007 to 31 May 2009.

Observation 2007/78

On the Committee's observation regarding information on judicial decisions concerning the application of legal provisions relating to conditions of work and the protection of workers while engaged in their work being rarely reported to the International Labour Office, the Government would like to inform the Committee that all judicial decisions relating to the above are communicated to the International Labour Office. If the ILO rarely receives reports is because the courts rarely have to make decisions on this topic. Either the cases are rarely brought forward or the parties settle out of court.

Nevertheless, the Government understands the Committee's concern regarding the importance of cooperation between the labour inspectorate and the justice system. The Government will review the General Survey of 2006 on labour inspection as mentioned by the Committee and determine whether and/or in which way such measures may be adopted in the context of the local situation.

Direct Request 2007

Article 5(a) and (b). The Government regrets to inform the Committee that no measures to promote the cooperation between the inspectorate services have been taken.

Article 12, paragraph 1(a) and (b). The Government acknowledges the Committee's remarks reiterating the labour inspector's right to freely enter any workplace liable for inspection at any hour of the day or night and to enter by day any premises which they may have reasonable cause to believe to be liable to inspection in order to discharge their duties. In this respect, the Government would like to emphasise the fact that labour inspectors act fully within their awarded authority to enter enterprises freely. When an inspector reaches a supposed business address which in fact is a residence, the inspector may not surpass his authority and enter that private dwelling for inspection. Though the labour inspector may request entry, which they always do, the occupant is under no legal obligation to meet the request, especially and in particular when the dwelling does not have the exterior appearance of a business establishment (i.e. business name signs, parking, apparent business activity etc.) and/or the occupant informs the inspector that the dwelling is not a business establishment despite the fact that the address is registered as a business address. The fact that a business uses a residential address does not automatically authorise entry by labour inspectors at that given address. The enterprise could have moved to a new address or ceased operations altogether and not yet have communicated the

change to the Labour Department or the Chamber of Commerce. It could also have purposely used a random residential address to hide its location from government officials. For these reasons, it is imperative that the Government abide by the limits provided to it by the privacy provision of the Constitution of Aruba (art. 1.16) and the provision regarding entry into homes (art. 1.17) so as to not infringe on the rights of private citizens who may not be aware that their residential address is also registered as a commercial address.

When the establishment is obviously a place where business is conducted, the inspector may enter forceably, according to art. 9a§3 of the State Ordinance Worker Registration (AB 1994 GT 8). The word 'forceably' refers to forced entry by inspectors accompanied by (a) police officer(s) or by inspectors with the special credential of an extra-ordinary police officer. As communicated to the Committee in previous reports, this latter authority is not vested in every inspector. At the moment, only the Head of the Labour Inspectorate possesses this credential. Plans to offer all current labour inspectors with a special training to attain this authority are in the making.

Article 13, paragraph 1 and 2. The Government takes note of the Committee's remarks regarding the distinction made by this article that in the event of imminent danger to the health and safety of the workers, there is no need to establish the existence of a violation of the law in order to impose a stoppage of work until such time as the conditions of health and safety in question are restored, but rather that the existence of an imminent danger constitutes sufficient grounds for ordering a measure with immediate force. The Government assures the Committee that the Committee's remarks will be communicated to the Committee for the Modernisation of Labour Legislation (CMLL) for its due attention. The Government would like to inform the Committee that the CMLL is currently in recess pending the outcome of the submitted amendments to the labour legislation.

Article 17 and 18. The Government informs the Committee that the CMLL has not yet concretely addressed the issue of the increased power of the labour inspectors. The proposals, as listed in the Government's 2005 report, are pending. The Government commits to inform the Committee of any progress made regarding the ordinances and decrees for labour inspection.

As it concerns the application of penalties, the Government informs the Committee the following. Penalties in the form of fines are not imposed as a first recourse to non-compliance. The non-compliant employer is first given the opportunity to correct the infraction and only at a follow-up visit when this has not been remedied, the employer may receive a fine. Penalties must serve in the first instance as a deterrent to non-compliance, which is why the application of this measure must therefore also serve as a real commination.

Division I - VI

- I. The Government of Aruba informs that no changes have been made to any legislation during the reporting period.
- II. The Government of Aruba refers the Committee to past reports for the application of the Articles of this Convention.
- III. There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.
- IV. The Government refers the Committee of Experts to the Government's comments under the Direct Request and to past reports for details regarding the practical difficulties encountered in the application of the Convention.
- V. The Government submits statistical tables from the annual report of the Inspection Division of the Labour Department for year-end 2006 (Annex 2) and 2007 (Annex 3) and part of the annual reports of the Technical Inspection Department for year-end 2006 (Annex 4), 2007 (Annex 5) and 2008 (Annex 6).

Employment Service Convention, 1948 (no. 88)

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

This report regards the period 1 June 2006 to 31 May 2009.

Direct Request 2007

Articles 1 and 2 of the Convention. The Government informs the Committee that the cooperation with private employment companies remains consistent with the information provided in past reports.

Article 7. The Government kindly refers the Committee to Annex 7 for data relevant to the Reintegration project for the years 2005 through 2008. As with the pilot project conducted in 2004, the results are poor. Even before the project started or shortly thereafter, about one third of the candidates dropped out due to a lack of interest. In addition, another fourth could not continue the programme because of various social-emotional and psychological issues. In general, many of the candidates for the project are individuals with multi-faceted problems stemming from financial to social to educational challenges.

The mediators who participated in this project were sent on an internship for two weeks to Maastricht, the Netherlands and visited several reintegration bureaus. The purpose of the internship was to allow the mediators to experience first-hand the manner in which effective mediation can be implemented so that a similar application may be executed in Aruba. Unfortunately, budgetary obstacles have impeded the thorough implementation for immediate and/or sustainable results.

Part IV of the report form. In addition to the challenges to the Reintegration project that the Government communicated to the Committee in past reports, there are other challenges of a personal nature as it regards the participating candidates themselves. One of the main problems is childcare for women who would like to take part in the project. The challenge is exacerbated by the fact that the industry that employs the largest number of people (tourism industry) and therefore are cooperating to place individuals at work, operates with schedules non-compatible with these women's possibilities. Evening and weekend shifts make working in this industry for these women extremely difficult because childcare services and after school care are available up to approximately 18:00 hour.

Other issues which influenced the negative results of the project include the length of time individuals were already in the welfare system, their social situation, their negative experience with job application, their low-level of skill and knowledge and low motivation.

The characteristics of these individuals, namely their low motivation, initiative and sense of responsibility aggravate the mediation challenges. In this group of persons are also many who seek unrealistic employment, in other words, many believe that they would not need any skills, education or experience.

The Government is aware that a successful reintegration project requires a much larger portion of the budget allocated to it. With its limited resources at the moment, the necessary training, employer incentives, transportation assistance, social-emotional counselling is also limited.

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. The Government submits the following table for the Committee's review.

	2007	2006	2005	2004	2003	2001
Public employment offices	1	1	1	1	1	1
Applications for employment ¹	924	1157	1360	1920	1197	1412
Applicants sent to vacancies ²		1659	1041	1547	674	979
Applicants placed in employment ³	229	130	147	194	138	118
% employment placement per applications received	25%	11%	11%	10%	12%	8%

¹ *Applications for employment* refers to first-time applications.

² *Applicants sent to vacancies* does not distinguish whether the same person was sent to two or more vacancies.

³ *Applicants placed in employment* includes new and existent applicants.

- V. There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.
- VI. The Government refers the Committee to the Government's comments under Part VI of the Direct Request of this convention.

Labour Clauses (Public Contracts), 1948 (no. 94)

(Ratification registered by the Netherlands Antilles on 10 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 2009.

Observation 2007

The Government takes due note of the Committee's comments. However, the Government must express that according to the reporting schedule that the Government downloaded from the ILO website in January 2008, no reports were due by the Government for this convention last year.

The Government further attached a copy of the general administrative rules (Annex 8) in which the the labour provisions as provided for by the Convention are included.

Division I - VI

- I. The Government of Aruba informs that no changes have been made to any legislation during the reporting period.
- II. The Government of Aruba refers the Committee to past reports for the application of the Articles of this Convention.
- III. There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.
- IV. The Government refers the Committee of Experts to the Government's comments under the Observations for further information.
- V. The Government informs the Committee that there are currently no statistics available on the application of this convention, except for the number of public contracts awarded in 2008, which is 49.

Abolition of Forced Labour Convention, 1957 (no. 105)

(Ratification registered on 18 February 1960)

Direct Request 2007

Article 1(c). 1. The Government takes notes of the Committee's statement recalling that the Convention covers any form of forced or compulsory labour which could be used as a means of labour discipline, including forced or compulsory labour of persons sentenced to imprisonment. In this regard the Government kindly refers the Committee to the Government's report in 2005 on this Convention and reiterates its statement that the provisions in the Penal Code (article 413 and 414) do not involve sanctions of forced or compulsory labour. The only punishment awarded by these provisions is imprisonment, not a combined punishment of imprisonment and (forced/compulsory) labour.

As it regards specifically the explanations in the General Survey 2007, the Government informs the Committee regarding the Committee's remarks stating that where provisions relating to breaches of labour discipline as such, for example desertion, absence without leave or disobedience, are often supplemented by provision under which seafarers may be forcibly returned on board ship, that neither penal provisions 413 and 414 require any forcible return of a seafarer on board ship. These provisions do not call for penalties of imprisonment involving an obligation to perform labour either.

According to paragraph 171 of the General Survey 2007, the Committee explains additionally that forced or compulsory labour may consist of measures to ensure the due performance by a worker of his service under compulsion of law (in the form of physical restraint or the menace of a penalty). And while wilful disobedience is punishable by imprisonment, as is stipulated in articles 413 and 414 of the Penal Code, and may be construed as such, the explanatory memorandum (Annex 9) clarifies that the punishment of imprisonment is conditional of acts that endanger the safety of the ship, the cargo or other persons on board.

2. The Government regretfully informs the Committee that no steps have been taken yet to bring section 83 of the Organic Act into conformity with the Convention. The situation in Aruba as it regards the prioritisation of laws which require amendments has not changed. In its next report, the Government will provide the Committee with information on any action taken on this point.

Division I - VI

- I. The Government of Aruba informs that no changes have been made to any legislation during the reporting period regarding abolition of forced labour.
- II. The Government of Aruba refers the Committee to past reports.
- III. The Government of Aruba refers the Committee to past reports.
- IV. There are no courts of law or other tribunals that have given decisions involving questions of principle relating to the application of this Convention.
- V. The Government informs that there are no statistics available on this Convention.

Employment Policy Convention, 1964 (no. 122)

(Ratification registered by the Netherlands Antilles on 10 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 2009.

Observation

Article 1. The Government informs the Committee that the Government erroneously prepared a simple report instead of the requested detailed report. Due the time limit for getting this report to the ILO on time, the Government cannot comply with the requested detailed report at this time. The Government assures the Committee that the Government will provide a detailed report including the information on how the Government keeps “under review” the measures to be adopted for attaining the objectives of full and productive employment specified in the Convention.

Article 3. The Government informs the Committee that the Labour Ordinance Committee (COL) has been reactivated by State Decree 6 February 2006 (Annex 10), replacing the previous decree AB 1990 no. 8. The COL consists of eleven delegates, where the most representative organizations of employers (4), workers (4) and the Government (3) are represented. The COL is scheduled to meet four times annually. During the reporting period five consultations took place.

The current state decree is being revised to include an additional employers' organisation as a committee member, which was inadvertently omitted.

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.
- III. The Government of Aruba refers the Committee to past reports.
- IV. There have been no decisions by courts of law or other tribunals involving questions of principles relating to the application of this Convention.
- V. The Government has not received any assistance or advice under the World Employment Programme or under other ILO technical cooperation.
- VI. The Government refers the Committee to (Annex 7) for on the reintegration project for the years 2005 through 2008 and to (Annex 11) for data on employment and unemployment rates by gender and to (Annex 12) for Labour market statistics.

Worker's Representatives Convention, 1971 (no. 135)

(Ratification registered on 6 August 1986)

Observation 2006

1. The Government regrets to inform the Committee that no measures have been taken to seek advice of the Department of Labour for the formalisation of some facilities concerning the access of the trade union leaders to the workplace of the employer and the distribution of union materials in the private sector.
2. The Government acknowledges the Committee's remarks and informs the Committee that the labour legislation review is still underway. The interim report on the CMLL's work has not been made public yet.

Division I - V

- I. The Government of Aruba refers the Committee to past reports.
- II. The Government of Aruba refers the Committee to past reports.
- III. There are no courts of law or other tribunals that have given decisions involving questions of principle relating to the application of this Convention.
- IV. The Government of Aruba refers the Committee to past reports

Minimum Age Convention, 1973 (no. 138)

(Ratification registered on 18 February 1986)

Observation 2008

Article 2, paragraph 3. The Government informs the Committee that the ordinance on compulsory education has not yet been approved by the parliament. The ordinance has again been sent back to the Department of Legislation and the Department of Education for adjustments and/or corrections. The parliament is awaiting a memorandum of reply to its questions from the Government regarding the ordinance. The Government will keep the Committee abreast of any progress made.

Article 3, paragraphs 1 and 2. The Government informs the Committee that the labour legislation review is still underway and that decrees as mentioned in the Government's previous report have not been enacted. The specific issue of the state decrees delineating those job of a hazardous nature, while on the CMLL's agenda, has not been tended to yet. The Government will communicate any progress made in this regard in a subsequent report.

Article 6 and Article 7. The Government informs the Committee that the issue of allowing exemptions for certain tasks which are necessary for the learning of a trade or profession and can be done by children of 12 years or over who have completed the sixth class of primary school, as permitted under article 16a and b of the Labour Ordinance, has not been addressed yet in the CMLL. The Government will communicate any progress made in this regard in a subsequent report.

Part V. The Government kindly refers the Committee to Part V of the body of the report on this convention.

Observation 2008/79

The Government refers the Committee to the Government's comments under Article 7 of the observation of this report and to past reports, in particular the Government's 2002 report on this Convention in which the Government informs the Committee on the performance of labour by minors, in practice. The situation remains the same today. The Government continues to suffer in its efforts for control and enforcement, principally due to the working hours of its labour inspectors. The Government has made efforts to introduce shifts for the labour inspectors but such has not come to fruition yet because of regulatory and financial challenges.

Division I - VI

- I. The Government of Aruba informs that no changes have been made to any legislation during the reporting period.
- II. The Government of Aruba refers the Committee to past reports for the application of the Articles of this Convention.
- III. The Government refers the Committee to previous reports.
- IV. There have been no decisions by courts of law or tribunals involving questions of principle relating to the application of this Convention.
- V. Statistics. The labour inspection did not report any infraction due to either non-compliance with national legislation or to non-compliance with the provisions of this convention. The Government refers the Committee to the annual report of the Inspection Division of the Labour Department as submitted with this report (Annexes 2 and 3). And submits the following table for the Committee's review.

Table. Employed Youth persons, by age (12 – 15 years)

Age	2006	2007	2008
12	0	0	0
13	1	0	0
14	0	2	1
15	7	6	11
Totaal	8	8	12

Source : SVB – Dec 2006, Dec 2007 and Dec 2008

List of Annexes

Annex	Document	Ref.
1	State Ordinance Penitentiary Regulations (AB 2005 no. 75)	C029
2	Department of Labour Annual Report, Labour Inspection, 2006	C081
3	Department of Labour Annual Report, Labour Inspection, 2007	C081
4	Department of Technical Inspection, Section Labour, 2006	C081
5	Department of Technical Inspection, Section Labour, 2007	C081
6	Department of Technical Inspection, Section Labour, 2008	C081
7	Results of the reintegration project, 2005 – 2008	C088
8	Uniforme Administratieve Voorwaarden, par. 115.1g	C094
9	Explanatory Memorandum Penal Code, 1986.152 no. 3	C105
10	Landsbesluit 6 Februari 2006 (COL)	C122
11	Employment and Unemployment rates by gender	C122
12	Labour Market Statistics	C122

ANNEXES