



# IOE ACT/EMP TOOLKIT ON INTERNATIONAL LABOUR STANDARDS

## MINIMUM WAGE FIXING

### CONVENTION, 1970 (NO. 131)

#### 1. Summary of the contents

**Convention No. 131** requires ratifying countries to establish and enforce a system of minimum wages which covers appropriate groups of workers. The Convention is in furtherance of other ILO minimum wage-fixing Conventions, the Minimum Wage-Fixing Machinery Convention, 1928, the Equal Remuneration Convention, 1951 as well as Minimum Wage-Fixing Machinery (Agriculture) Convention, 1951, although it is not intended to revise or replace these earlier Conventions.

The Convention provides for the following:

- ▶ The creation of a system of minimum wages (Art. 1)
- ▶ Tripartite consultation during the ratification and implementation processes (Arts. 1 and 4)
- ▶ Minimum wages having the force of law, enforceable by sanctions (Art. 2)
- ▶ Respect for collective bargaining (Art. 2)
- ▶ Consideration to be taken of workers' needs and economic factors when setting a minimum wage (Art. 3)
- ▶ The establishment and maintenance of machinery to fix and adjust minimum wage (Art. 4)
- ▶ The use of appropriate measures to ensure effective enforcement of the minimum wage (Art. 5)

The accompanying (non-binding) Recommendation No. 135 goes into further detail and suggests measures which may be taken by ratifying States in applying the Convention.

For more detail, see [the text of the Convention](#) and [the text of the Recommendation](#).

#### GENERAL INFORMATION

- **Date of adoption of the Instrument**  
*22 June 1970*
- **Voting**

##### Governments voting

|         |            |                |
|---------|------------|----------------|
| for: 77 | against: 2 | abstaining: 11 |
|---------|------------|----------------|

##### Employers voting

|         |             |                |
|---------|-------------|----------------|
| for: 17 | against: 42 | abstaining: 31 |
|---------|-------------|----------------|

- **Date of Entry into Force**  
*29 April 1972*
- **Number of Ratifications**  
*51 (as of August 2012)*
- **Number of Denunciations (Art. 9)**  
*0*
- **Next Denunciation Period**  
*29 April 2012 - 29 April 2013*
- **Status of the instrument**  
*Up-to-date*  
*Technical Convention*

*For further information see Annex I.*

## 1. Assessment from an employers' perspective

Convention No. 131 requires States to set and enforce minimum wages, taking into account the needs of workers and economic factors. Despite its noble goal of ensuring a decent living income for wage-earners, the Convention acts as an obstacle to the important exercise of bargaining between employers and employees. Employers and workers are in the best position to determine the appropriate level of remuneration for the services provided by the worker. Given the diversity among different undertakings, industries and geographical areas within a State, the government authorities are unlikely to have enough information to make appropriate determinations with regard to wages.

Minimum wage levels have a direct and indirect impact on economic development, productivity and levels of employment. Wage levels which are too high result in increased production costs and may decreased competitiveness, which often leads to lost jobs and fewer available employment opportunities. When unemployment rises, the workers most affect are often those who are the most vulnerable including youth, women and disabled persons – the very groups that minimum wages are expected to protect.

Further, the imposition of penal sanctions – including imprisonment – for employers who violate legislation implementing the Convention<sup>1</sup> may result in harsh punishments that are disproportionate to the severity of the offence. In an increasingly-globalized world, the possibility of such undue treatment may discourage employers from doing business in ratifying States that might benefit greatly from the investment, job creation and economic growth.

Given the restrictive nature of the Convention, coupled with the negative impacts on enterprise and the wider State economy, it is recommended that employers' organizations advocate *against* the ratification of Convention No. 131.

### Overall Employer Assessment



**While employers have expressed their support for the general premise of the Convention – that is, ensuring that workers have a decent living wage with which they may meet their basic material needs – the provisions of the Convention may deliver results that are counterproductive to the stated goals of the instrument.**

**The Convention requires government authorities in ratifying States to set minimum wages, going beyond previous Conventions on the same issue. The result is that the instrument undermines the freedom of collective bargaining and may lead to the adoption of wage levels that are too high. These wage levels, in turn, are likely to contribute to decreased productivity, reduced competitiveness and increased unemployment.**

**Given its restrictive nature, ratification of Convention No. 131 is *not* recommended.**

<sup>1</sup> See: commentary on Art. 2, below.  
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## 2. Legal Analysis of the Provisions

### Article 1 (Establishment of Minimum Wage)

1. *Each Member of the International Labour Organization which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.*
2. *The competent authority in each country shall, in agreement or after full consultation with the representative organizations of employers and workers concerned, where such exist, determine the groups of wage earners to be covered.*
3. *Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under Article 22 of the Constitution of the International Labour Organization any groups of wage earners which may not have been covered in pursuance of this Article, giving the reasons for not covering them, and shall state in subsequent reports the positions of its law and practice in respect of the groups not covered, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such groups.*

### COMMENTS

Convention No. 131 goes beyond prior minimum wage Conventions in that No. 131 requires the *setting of a minimum wage* whereas Convention Nos. 26 and 99 require only the *establishment of procedures according to which minimum wages could be set*. This may account for the disparity in ratification – many of the States who have ratified Convention No. 26 have chosen not to ratify Convention No. 131. States that have ratified earlier minimum wage conventions and are considering ratifying Convention No. 131 should be made aware of this important difference between the Conventions.

The Convention does not provide a definition of “minimum wage.” The CEACR has noted that the reference to a minimum wage that cannot be abated<sup>2</sup> refers to the establishment of a “minimum *living wage*” that is sufficient for workers to meet their basic material needs and, in some cases, those of their families.

Employers’ organizations may stress to their respective governments that there already exists the right to a decent minimum wage recognised in numerous universal or regional instruments. Employers’ organizations should be familiar with the instruments that are applicable to their state.

Where countries will be ratifying the Convention, employers’ groups can still advocate that States take advantage of the flexibility that is built into Art. 1. This provision permits States to apply the minimum wage to **“groups of wage earners ... [where] such coverage would be appropriate.”** Minimum wages may not be appropriate for particular groups of workers. Employers’ organizations should identify these groups and provide to States their reasons for exclusion from the minimum wage.

### HIGHLIGHTS

- ❖ Convention No. 131 requires ratifying States to create a system of minimum wages, sufficient to meet a worker’s basic material needs.
- ❖ Governments have an obligation to consult and, preferably, to find agreement with, the social partners to determine which groups of wage-earners will be covered.
- ❖ Any exclusions must be indicated in a State’s first report. Therefore, employers’ organizations should insist on full consultation prior to the report in order to offer their views on possible exclusions.

<sup>2</sup> See: commentary on Art. 2, below.  
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Some of these groups may include<sup>3</sup>:

3. Workers who are paid at a piece rate or those who work on commission
4. Agricultural workers, domestic workers and home workers
5. Occupations wherein the workers are highly-skilled or highly-educated, as such workers have the power to negotiate wage levels that they feel are suitable
6. Groups of workers in industries that are struggling or are in industries that the State has identified as being of certain importance or requiring assistance
7. Groups of workers for whom employment should be promoted including older workers, youth and disabled persons
8. Persons working in non-profit-making institutions such as religious, charity or political institutions
9. Babysitters, companions for older persons or the sick and students undergoing training.

Given the impact that an increase in the labour cost would have for employers, employers' organizations must be strong advocates on behalf of their constituents, by insisting on full consultation with regard to the ratification and implementation of the Convention. They must be prepared to explain why, despite the noble goal of eradicating poverty, fixing a minimum wage may not meet the stated goal, and why States must take into account what is feasible and practicable in light of the national practice and conditions. Employers' organizations must draw attention to the obligation for States to reach agreement with employers' and workers' organizations or, at the very least, to engage in full consultation prior to determining which groups of wage earners are to be covered, as guaranteed by Art. 1(2). This consultation should also be extended to the participation of both groups in the establishment, operation and modification of wage-fixing machinery, which is covered by Art. 4 of the Convention.<sup>4</sup>

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<sup>3</sup> See: [General Survey, 1992, para. 110](#) for additional examples.

<sup>4</sup> See: commentary on Art. 4, below.



## Article 2 (Force of Law & Freedom of Collective Bargaining)

1. *Minimum wages shall have the force of law and shall not be subject to abatement, and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions.*
2. *Subject to the provisions of paragraph 1 of this Article, the freedom of collective bargaining shall be fully respected.*

### COMMENTS

Art. 2(1) requires that person(s) liable for the failure to meet the minimum wage shall be subject to the appropriate penal or other sanctions. Employers' organizations should advocate for penal sanctions to be applied in only the most egregious of circumstances, where the liable person(s) consistently and intentionally fail to observe the requirement to pay minimum wage. Given the nature of the offence, pecuniary or administrative sanctions are much more proportionate to the severity of the offences.

One of the most important conditions of employment – if not *the* most important – is the level of wages. The ideal method of setting employment conditions, including wage levels, is to ensure free bargaining between the parties directly concerned, with no state intervention. Minimum wages act as a wage index and is, in reality, a restriction of free collective bargaining. Although Art. 2(2) states that the Convention cannot contravene the principle of freedom of collective bargaining, the reality is that a wage index is inherently restrictive, as employers and workers are prohibited from countering the State-determined minimum wage, even in instances when workers are willing to accept a lower wage in exchange for allowances in kind (non-monetary remuneration). Systems for fixing minimum wages should be an emergency measure and free bargaining, collective or individual, should dominate. Where the conditions of free bargaining exist, the need for a set minimum wage is obsolete.

It is worth noting that allowing minimum wages to be set by collective bargaining alone has worked in certain industrialized countries. As the CEACR points out, in these cases, minimum wages fixed by collective agreement may be extended and made binding for an entire branch of industry, thus having the same binding force as minimum wages fixed by legislation.<sup>5</sup> Germany, by way of example, has legislation related to minimum wages that has not been applied in many decades for most categories of wage earners because wages fixed by collective agreement serve, in practice, as a minimum wage level. Similarly, in Switzerland, minimum wages are also fixed through extended collective agreements, with exceptions for agricultural workers and domestic workers.<sup>6</sup>

### HIGHLIGHTS

- ❖ Failure to abide by the minimum wage shall be punishable by penal or other sanctions.
- ❖ Employers' organizations should advocate for legislation which reserves penal sanctions for only the most egregious violations.
- ❖ Art. 2(2) guarantees respect for collective bargaining, but *only when the result accords with the government-determined minimum wage.*

<sup>5</sup> [General Survey, 1992, para. 53.](#)

<sup>6</sup> [General Survey, 1992, para. 149.](#)



### Article 3 (Elements for Setting Minimum Wage)

*The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include--*

- (a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;*
- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.*

#### COMMENTS

Art. 3 underscores the difficulty in setting a minimum wage structure and the conflict between what is desirable, as outlined in 3(a) and what is feasible, as outlined in 3(b). While the intent of the Convention is to ensure that those involved will be able to sustain a decent living, it is important for employers' organizations to stress that setting a minimum wage is only one of a vast number of measures which could be taken by States.

Where workers may be willing to work for a lesser wage in return for other, non-monetary benefits, such beneficial arrangements would be barred by legislation and creative solutions that would bring workers and employers together would be lost. Furthermore, the state may not be in the best position to develop minimum wage standards as the economic conditions across the various regions of a country may vary dramatically.

Where ratification has or will occur, Art. 3(b) outlines the economic factors that are required to be taken into consideration in determining the minimum wages. States should be reminded that the application of the Convention would not be useful for workers if either set of factors were ignored. Minimum wages that are too high often result in job loss and an increase in the level of wages results in fewer employment opportunities. Jobs exist only to the extent that there is a demand for the products and services, and that demand is dependent upon the price paid by consumers. Labour costs are one of the highest costs of any business, and the link between workers' wages and the number of available jobs is an established fact that cannot be ignored. In other words, states should not focus on what is desirable for workers *to the exclusion of* what is feasible for the economy and employers.

As employees may be willing to work for a lesser wage in return for other, non-monetary benefits, such beneficial arrangements would be barred by the legislation and creative solutions that would bring workers and employers together would be lost.

The state may also not be in the best position to develop minimum wage standards as the economic conditions across the various regions of a country may vary dramatically, including the cost of living as well as what wage levels are necessary for the minimum wage to be a living wage.

#### HIGHLIGHTS

- ❖ Art. 3 sets out the criteria to be considered when fixing minimum wages, which involves balancing workers' needs with economic factors.
- ❖ Employers' organizations must not allow their respective governments to underestimate the importance of the economic elements, or their impact on the interests of workers.
- ❖ Employers' organizations should emphasize that minimum wage levels that are too high will be detrimental to the State as a whole by increasing unemployment, reducing the competitiveness of enterprises within the State and negatively affecting the most vulnerable workers.



## Potential Negative Impacts of Minimum Wages

As a matter of economics, employers find that increasing the minimum wage would have negative impacts on the most vulnerable workers, those working at the minimum wage level. Where demand decreases as prices rise, compulsion to increase wage levels to low-wage workers can be expected to reduce employment opportunities for the least skilled or those with little experience. Women and youth often comprise the majority of low-wage and low-experience workers. While the purpose of ratifying the Convention is to provide a living wage to all workers, the scenario presented above would have the opposite effect.

It is also important to note the effect of an imposition of, or increase in, the minimum wage on subsequent education levels for youth. A higher minimum wage would obviously affect a student's decision to complete some minimum level of education or to leave and pursue employment to receive the higher level of pay in the short-term, despite the fact that the lack of education will restrict wage earning potential in the long-term.

A second argument that may be made by employers' organizations is that raising the minimum wage would not have a significant impact on reducing the level of poverty in the ratifying state. Higher wages would lead to lower employment levels in order for businesses to remain viable in an increasingly competitive product market. As outsourcing and offshore manufacturing and production becomes more prevalent, incentives are required to encourage domestic and international investment. Higher minimum wages would detract from this goal and lead to further unemployment as some jobs could be transferred to countries that have not ratified the Convention.

The United Kingdom denounced Convention No. 26, the Minimum Wage-Fixing Machinery Convention, in 1985 based on its need to maximize the flexibility and the freedom of action necessary to maximise employment opportunities, particularly for young workers. The United Kingdom is one example that employers can use to demonstrate the difficulty of instituting a minimum wage in practice. Other countries have also raised concerns regarding the impact of the Convention on unemployment, enterprise viability and competitiveness on the international market.<sup>7</sup>

Employers' organizations may also point out that an increase in the minimum wage would not help those who are out of work find employment. With the resultant decrease in labour demanded due to the higher labour cost it would become even more difficult for individuals to find work, and the working poor whose wages are raised face a high risk of layoff due to the decreased demand for labour services. Overall, there would be improvements for only a small group, while a greater number of workers would not be improved by the ratification of the Convention.

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<sup>7</sup> [General Survey, 1992, para. 338.](#)  
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## Article 4 (Machinery)

1. *Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 thereof can be fixed and adjusted from time to time.*
2. *Provision shall be made, in connection with the establishment, operation and modification of such machinery, for full consultation with representative organizations of employers and workers concerned or, where no such organizations exist, representatives of employers and workers concerned.*
3. *Wherever it is appropriate to the nature of the minimum wage fixing machinery, provision shall also be made for the direct participation in its operation of--*
  - (a) *representatives of organizations of employers and workers concerned or, where no such organizations exist, representatives of employers and workers concerned, on a basis of equality;*
  - (b) *persons having recognised competence for representing the general interests of the country and appointed after full consultation with representative organizations of employers and workers concerned, where such organizations exist and such consultation is in accordance with national law or practice.*

## COMMENTS

Art. 4 requires ratifying States to create machinery for fixing and adjusting minimum wages. Paragraphs 2 and 3 create an obligation for governments to engage in tripartite consultation with *representative* employers' and workers' organizations that, given the content of the Convention, represent the interests of wage earners and employers concerned. Employers' organizations have an interest in participating to the greatest extent possible in the establishment, operation and modification of machinery for fixing the minimum wage. Employers' organizations are in the best position to advance employers' interests when they are involved in the process of creating and maintaining the machinery.

Wage fixing machinery is classified into categories by the Committee of Experts. The categories are (i) statute; (ii) means of government decision; (iii) wage committees, councils or boards; (iv) court rulings; and (v) arbitration awards.<sup>8</sup> To this list may also be added the fixing of wages through the conclusion and extension of collective agreements.<sup>9</sup> Employers' representatives should advocate to be allowed as much input and participation as possible, no matter the machinery utilized by the State. Employers' organizations may point to paragraph 8 of Recommendation No. 135 which advises that participation should include membership in bodies that have been set up to advise the competent authority on minimum wage questions or to which the government has delegated responsibility for decisions on these wages.

### HIGHLIGHTS

- ❖ Ratifying States must establish and maintain a system for fixing and adjusting minimum wages.
- ❖ Governments have an obligation to engage in consultation with and/or allow direct participation of representative employers' and workers' organizations.
- ❖ Employers' organizations must insist on being allowed the greatest amount of input possible, in order to advance the interests of concerned employers.

<sup>8</sup> [General Survey, 1992, para. 112.](#)

<sup>9</sup> [General Survey, 1992, para. 113.](#)



A differentiation is made between “consultation” (as included in Art. 4(2)) and “participation” (as included in Art. 4(3)(b)). Whereas the idea of tripartite *consultation* implies the ability for employers and workers to have their voices heard during the decision-making process,<sup>10</sup> the concept of participation “implies a greater role on the part of organizations of employers and workers or of their representatives in decision-making ... [including] direct collaboration with the responsible authorities in the application of the provisions.”<sup>11</sup> Art. 4, taken together with the accompanying Recommendation, “implies that employers and workers, their representatives or those of their organizations be able to have a *real influence* on the decisions to be taken.”<sup>12</sup>

Finally, with respect to paragraph 3(b) of Art. 4, there should be full consultation with employers and workers prior to the appointment of any such independent persons. To ensure that all stakeholders accept the neutrality of the appointment, employers’ organizations should seek to have States agree that the consent of both employers’ and workers’ representatives is required prior to an appointment being made. By receiving the cooperation and consent of both workers and employers, States will be able to build the legitimacy of the minimum wage fixing machinery and improve the trust of employers and workers.

#### HIGHLIGHTS

- ❖ States may also allow the participation of independent persons to represent the general interests of the country.
- ❖ Employers should emphasize that the consent of the social partners should be required before the appointment of any such persons, to safeguard the neutrality and legitimacy of the process.

<sup>10</sup> [General Survey, 1992, para. 194.](#)

<sup>11</sup> [General Survey, 1992, paras 192-193.](#)

<sup>12</sup> [General Survey, 1992, para. 195.](#) (emphasis added)



## Article 5

*Appropriate measures, such as adequate inspection reinforced by other necessary measures, shall be taken to ensure the effective application of all provisions relating to minimum wages.*

### COMMENTS

Pursuant to Art. 5, States must take steps to ensure the **“effective application”** of the Convention. Based on the preparatory work of the standard-setting Committee that drafted Convention No. 26, the CEACR highlights three fundamental elements of enforcement measures relating to wage-fixing machinery:<sup>13</sup>

- (a) Information provided to workers and employers on the minimum rates fixed;
- (b) The establishment of forms of sanctions to remedy and prevent infringements of the rates laid down;<sup>14</sup> and
- (c) The establishment of appropriate supervision of what actually takes place in the trade concerned.

Employers' organizations should, through the consultation process, provide input into how the articles of the Convention should be effectively applied. In addition to participating in the fixing of minimum wages, employers have an interest in having input into the formulation of a wage inspection system. Employers' organizations should ensure that the mechanisms that are employed are neutral and that the requirement to maintain business records is a reasonable one that is not too burdensome. For instance, the requirement to archive records for a very long period of time is one example where implementation measures could become unduly burdensome on employers, especially where records are still kept on paper, as opposed to on computers. As noted above, employers' organizations must also advocate for the application of sanctions which are proportionate to the offence, rather than unnecessarily harsh.

### HIGHLIGHTS

- ❖ Ratifying States are required to ensure that the Convention is effectively applied to all wage earners selected for coverage in accordance with Art. 1.
- ❖ Effective measures may include publishing information regarding minimum wages, establishing sanctions for non-compliance and/or creating methods for the supervision of wages.

<sup>13</sup> [General Survey, 2012, para. 342.](#)

<sup>14</sup> See: commentary on Art. 2, above.

## ANNEX I

## FURTHER GENERAL INFORMATION

## VOTING DETAILS:

**Governments' Votes against**

Central African Republic, Jamaica.

**Governments' Abstentions**

Belgium, Cambodia, India, Indonesia, Liberia, Pakistan, Sierra Leone, Singapore, Tanzania, Thailand, Uruguay.

Despite abstaining in the voting of the Convention, Tanzania and Uruguay ratified it in 1983 and 1977 respectively.

## STATUS OF THE CONVENTION

The Working Party on Policy regarding the Revision of Standards (“Cartier Working Party”) (1994-2002) was a Working Party of the ILO Governing Body Committee of Legal Issues and International Labour Standards. It was chaired by a Government representative. Its meetings were private. It was comprised of 16 Government members (four from each region), eight Employer members and eight Worker members, and had the following mandate: to assess actual revision needs; to examine the criteria that could be applied to the revision of standards; to reflect on the possibility of extending and supplementing the evaluation of standards; to make the standard-setting system more coherent by narrowing the differences between the social policy objectives it establishes; to analyze the difficulties and obstacles involved in the ratification of ILO Conventions; to envisage the measures which might be proposed to improve the ratification of Conventions that have been revised.

The Cartier Working Party expressed its agreement with the Office's proposals to do the following:

- (a) to recommend to the Governing Body that it invite member States to contemplate ratifying Convention No. 131 and to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of the Convention;
- (b) that the Working Party (or the LILS Committee) re-examine the status of Convention No. 131 in due course.<sup>15</sup>

In addition to the remarks made in the case of Convention No. 26, it can be noted that the Ventejol Working Parties of 1979 and 1987 classified Convention No. 131 in the category of instruments to be promoted on a priority basis. It also considered that it provided a valid foundation for national action as well as a ratification target. Further, while Convention No. 131, similarly as Convention Nos. 26 and 99, suffered a hiatus in the flow of ratifications as of 1983, it has received an additional six ratifications since the General Survey in 1992. Its ratification rate remains rather low, however, in comparison with the ratification rates of Conventions Nos. 26 and 99. The high number of pending comments by the Committee of Experts as well as the numerous observations transmitted from workers' organizations is to be noted. These indications also seem to raise some uncertainties as to the continued relevance of Convention No. 131. The Working Party may therefore wish to propose that a request be made for additional information from member States concerning the obstacles and difficulties encountered, if any, that might impede or delay its ratification, to an invitation to ratify Convention No. 131.

### ► *Employers' Position on the Conclusions of the Cartier Working Party*<sup>16</sup>

“The Employer members asked that subparagraph (b) of the Office's proposals with respect to Conventions Nos. 26 and 99 be amended to include, for States that have ratified Convention No. 131, an invitation to denounce Conventions Nos. 26 and 99, if appropriate. They also proposed shelving the earlier Conventions and promoting the ratification of the more recent instruments.”

“The Employer members stressed that the issue of minimum wages was extremely delicate. Their intention was not to suggest that the oldest instruments should be abrogated but to avoid

<sup>15</sup> [Governing Body – Committee on Legal Issues and International Labour Standards \(LILS\), March 1997, Examination of the needs for revision of Conventions \(third stage\), Document No. GB.268/LILS/5\(Rev.1\), para. 70.](#)

<sup>16</sup> [Governing Body – Committee on Legal Issues and International Labour Standards \(LILS\), November 1996, Part II: Convention in need of revision \(Phase 2\), Document No. GB267/LILS/4/2, 267th Session, paras. 16 and 19.](#)



overlapping between the various instruments. With this in view, it would be preferable to examine the consequences of a possible ratification of Convention No. 131 and to re-examine the question at an appropriate time.”

## EMPLOYERS' ATTITUDES AT THE TIME OF ADOPTION

### FIRST DISCUSSION

- ▶ **1969, Report of the Committee on Minimum Wage, 53rd session ILC.**

“The Employers’ members of the Committee strongly urged retention of the reference to economic considerations as criteria for determining the level of minimum wages. They argued that, **if these factors were ignored, workers whose protection was envisaged** in the proposed instrument **might instead be harmed by minimum wage fixing, through inflation or unemployment.**”

- ▶ **1969, Report of the Committee on Minimum Wage: Submission, Discussion and Adoption in Plenary, 53rd session ILC.**

Mr. YLLANES RAMOS - Employers' delegate, Mexico, Vice-Chairman of the Committee on Minimum Wage. “In this matter we are faced with a problem of exceptional difficulty. We are all agreed that the true wealth of nations is man and it is intolerable that there should be workers living hand-to-mouth. We know that this is intolerable, we are concerned about their needs; it is not only necessary for us to raise the standard of living of the peoples in the various countries – this is the real meaning of economic development – but also absolutely essential that these people should have purchasing power and thus be able to meet the needs of their family. Accordingly, any idea which makes possible a system or a policy by which an insufficient wage will be raised is one we can all support. **However, essentially the questions consists in the fact that we are concerned not with a problem of theories concerning the needs of workers and their satisfaction but with the problem of systems and meethods.**

In this respect certain Employers' members and in particular some from the developed countries pointed out that minimum wage fixing by legislation is not in line with the system applied with great efficiency in their own countries.

Others of us in the Employers' group have a slightly different approach; we think machinery and systems including those provided for by law are the right approach. As you will see, this approach is appropriate to the development and the degree reached in relations between employers and workers in the different countries. Both points of view are equally worthy of consideration, because we are all concerned to protect the worker. Certain matters ...deprived the instrument of that flexibility it should possess. ... We have always considered, and I must repeat this again here, that it is quite **wrong to introduce penal considerations into industrial relations** which should be governed by a spirit of co-operation, in accordance with the law as administered by specific courts and tribunals.”

### SECOND DISCUSSION

- ▶ **1970, Report of the Committee on Minimum Wage, 54th session ILC**

“The Employers’ Vice-Chairman said that his group favoured a Recommendation only, stressing that the concept of a minimum wage varied widely, especially among developing countries. He listed **other points on which the Employers’ members had reservations: minimum wage fixing**



**should not interfere with collective bargaining; the inclusion of a provision calling for penal sanctions was not acceptable;** the term ‘workers’ families’ had different meanings in different countries – it would be almost impossible to define it precisely, therefore, it should be deleted from the Convention; finally, **there should be no prohibition of payments in kind.”**

“The Employers’ members moved to an amendment of [Art. 2], proposing the deletion of the words ‘penal or other’ before ‘sanctions’ and the addition at the end of the paragraph of the phrase ‘in accordance with national law or practice’. ...

The Employers’ Vice-Chairman stated that the purpose of this amendment was to remove the emphasis on the possibility of imprisonment as raised by the reference to penal sanctions and to make more explicit the role of national law and practice. ...

There was extensive discussion of the amendment. Employers’ members and some Government members put forward several reasons for their support of the proposed changes. The term ‘or other sanctions’ was too vague and the reference to penal sanctions could be interpreted to include the possibility of sending employers to prison. Provision for imprisonment in minimum wage legislation was not conducive to good industrial relations; it was a step backwards from the general trend of international instruments away from such provisions; and it was too harsh a penalty. Furthermore, specific reference to penal sanctions was superfluous as the term ‘appropriate sanctions’ would include them in so far as they were called for under national conditions.”

“An amendment was proposed by the Employers’ members to insert the word ‘basic’ before ‘needs’ in [Art. 3(2)(a)] to make the text more precise by indicating that the concept of the minimum wage was to be limited to that of a wage which would meet the basic needs of workers.”

► **1970, Report of the Committee on Minimum Wage: Submission, Discussion and Adoption in Plenary, 54th session ILC**

Mr. TARP – Employers’ Adviser, Denmark. “We therefore accept minimum wages as one means of overcoming poverty and improving standards of living for the poorest sections of the population, through a redistribution of primary incomes.

We must therefore take into consideration **two aspects of the wage problem** to which the other members, in our opinion, have not paid enough attention. **One aspect is the cost side of a minimum wage policy, the other is that minimum wages inevitably influence the whole wage structure of a country and of the individual enterprise. However important a part in social protection minimum wages may play, these aspects cannot be disregarded.** ...

We feel that those involved, those who have a vital interest in wage determination, employers and workers, are those who are best qualified to fix wages. This being so, we employers have readily accepted that there should be an ILO instrument on minimum wage fixing, but we have stressed that the instrument should be considered as an integral part of ILO technical assistance, and part of the efforts of the developing countries to overcome poverty and to promote employment and economic growth. ... It should not impose legal obligations; consequently the instrument should be a Recommendation and not a Convention.

**The ILO instruments must be realistic, and set realistic targets that can be reached within a reasonable time, instead of creating pious unrealistic hopes.”**



## GOVERNMENTS SHARING EMPLOYERS' ATTITUDE AT THE TIME OF THE ADOPTION

### FIRST DISCUSSION

- ▶ *1969, Report of the Committee on Minimum Wage, 53rd session ILC.*

“The Government member of Algeria proposed a subamendment to delete the phrase ‘and to the relative living standards of all other social groups’ [in what is now Art. 3(2)(b)]. He believe it would be **difficult for developing countries to afford the cost of gathering the data required to use this criterion for fixing the level of minimum wages.**”

- ▶ *1969, Report of the Committee on Minimum Wage: Submission, Discussion and Adoption in Plenary, 53rd session ILC.*

Mr. SPARSIS – Government delegate, Cyprus. “I think we should emphasise that we should bring in **a system of collective bargaining. The machinery for fixing wages should not undercut and undermine the system of free collective bargaining; it should rather supplement that system.** I see nowhere in the report a very strong emphasis that we should maintain a free system of collective bargaining and supplement it, as appropriate, to fix minimum wages.”

### SECOND DISCUSSION

- ▶ *1970, Report of the Committee on Minimum Wage, 54th session ILC*

“A widely expressed view by Government members was that the **new instruments should be flexible enough to allow for ratification by countries with widely differing economic and social conditions.** There was also discussion of the role and importance of collective bargaining in raising living standards. Some Government members stressed the need for more extensive coverage than that provided for in the text. There was general agreement that minimum wage fixing should provide a floor for wages, but that wages above this level could and should, wherever possible, be fixed by means of collective bargaining.”

“An amendment by the Government member of Cyprus proposed to ... insert a new Art. 6 as follows: ‘Collective bargaining as a means of determining wages and other conditions of employment should in no way be impaired or undermined by the provisions of this Convention.’ ...

The Government member of Cyprus in support of his amendment stated that its purpose was **to stress the importance of collective bargaining. Collective bargaining should have the primary role in wage determination, and minimum wage fixing was a temporary or intermediate step in achieving this end.** Employers’ members supported this amendment.”

- ▶ *1970, Report of the Committee on Minimum Wage: Submission, Discussion and Adoption in Plenary, 54th session ILC*



Mr. NAYAK – Government adviser, India. “In a developing country the impact of rising wages on the efficiency and productivity of the worker is much greater than in a developed country. Thus, apart from any moral considerations, the only way of breaking the vicious cycle which has so far impeded progress is **by promoting a rise in productivity**. Once this is achieved, the process of growth and development will be greatly facilitated.

**Minimum wages constitute one part of the strategy; the other is the wider creation and diffusion of employment.** The proposed Convention recognises the connection between these two factors and also the need for a conscious effort to reconcile them. Otherwise, they are capable of acting in opposition to each other.

Also, in developing countries the number of wage earners is a far smaller percentage of the total labour force than in developed countries. In attempting to raise the economic status of the wage earner, one cannot afford to ignore the needs of the large numbers who are self-employed. Thus the minimum wage has to take into account not only the general level of wages in the country but also the general standard of living in the country. The Convention recognises this important consideration also.”

## EMPLOYERS' ATTITUDES AT LATER REVIEWS

### ► 1992 General Survey. Article 19 of the ILO Constitution<sup>17</sup>

"The Employers' members stated that the abundance of detail in the General survey might give rise to confusion and they cited as an example the situation in Germany. Minimum wage-fixing procedures in that country were referred to repeatedly in the Survey; however, although legislation existed on this matter, it had not been applied for 40 years. The Government member of Germany recalled that the fixing of minimum wages by the State only had limited significance in his country, except for home workers. In Germany, the wages determined by collective agreements were really minimum wages.

The Employers' and Workers' members noted that the level of wages is one of the most important conditions of employment, if not the most important. **The Employers' members recalled that the ideal method of setting employment conditions, including wage levels, is to ensure free collective bargaining between the parties directly concerned, with no state intervention.** Procedures for establishing minimum wages, according to the philosophy of the Conventions, had to come into play if a free system of setting wages between the parties did not exist.

The Employers' members raised the question whether minimum wage fixing interferes in collective bargaining. An answer was given in Article 2 of Convention No. 131, according to which the provisions of the Convention may not contravene the principle of freedom of collective bargaining. However, from a less theoretical point of view, it was noted that where the minimum wage became a widespread standard it took account of freely negotiated wages but, at the same time, had a direct impact on them. **A minimum wage that acted as a wage index was in reality a restriction of free collective bargaining, and employers and workers responsible for working conditions could not counter this influence.** Repeated references to wages for comparable work or wages for similar work covered by collective agreements could have negative effects on free collective bargaining. It would be preferable, if there is really a need for minimum wages, to refer to wages paid in collective agreements for the same work."

"The major result that could be expected from minimum wages was, according to the Employers' members, that those involved would be able to lead a decent life. However, the fixing of minimum wages was only one of a vast number of measures which could be taken by States to ensure a dignified existence for their citizens."

**"For the Employers' members, economic factors listed in Article 3(b) of Convention No. 131 had to be taken into account when setting minimum wages. Application of the Conventions in minimum wages would not be useful for workers if such factors were ignored.** The payment of too high minimum wages would result in the loss of jobs, depending on the level of wages and the number of people drawing them. If young workers in apprenticeship and unskilled workers whose production was lower than that of the average worker were entitled to receive the same minimum wage as skilled workers, younger or less skilled workers would have fewer opportunities to find appropriate employment. Jobs only existed to the extent that there was a demand for products and services, and demand was dependent upon the price paid for these

<sup>17</sup> [ILC Record of Proceedings, 1992, Provisional Record 27, Report of the Committee on the Application of Standards, pages 27/15 et seq., para. 97-99, 101, 103, 107 and 113.](#)



products and services. **The particularly close link between the level of wages and the number of available jobs was established fact.**"

"In addition, referring to Chapter IV of the General Survey as to the criteria for fixing and adjusting minimum wages, the Employers' members noted that **minimum wages could not be set by means of mathematical formulae, and that what was needed was a compromise between what was desirable and what was feasible.** There was a danger in establishing a uniform wage structure of the type established by the totally ineffective planned economies. They considered that there had to be a differentiated approach to setting minimum wages."

"While recognising the existence of a strong demand in many countries for minimum wage fixing, the Employers' members stressed that the systems for fixing minimum wages were an emergency measure, a second-class alternative in a world where free collective bargaining should dominate. In these conditions of free bargaining, the aims of the Conventions on minimum wage fixing would become obsolete."

#### ► *Discussion of Individual cases*

##### **1991 – Uruguay<sup>18</sup>**

"The Employers' members pointed out that the Committee of Experts took note with satisfaction of the adoption of a Decree establishing a minimum wage for domestic workers. Concerning the extension of collective agreements, they noted that, if there was no such extension, the workers themselves could ask for a collective agreement and for negotiations. With reference to the Workers' members' comments concerning the fact that the minimum wage was lower than the actual inflation rate, the Employers' members considered that other factors should also be taken into account in establishing the minimum wage, so as to draw some kind of balance between social and economic aspects. With regard to the procedure for establishing the minimum wage, they observed that both employers and workers had to be involved to a considerable degree, and noted the Government's declaration to the effect that in the future the correct procedure would be adhered to. The Employers' members considered it appropriate that the Government would provide more detailed information concerning minimum wage fixing in agriculture, where some disputes still existed. They pointed out that the Government needed to establish minimum wages for all these areas, using the procedures laid down in the Convention."

"The Employers' member of Uruguay explained that if the national minimum wage was fixed unilaterally by the Government it had importance in its effect in the calculation of benefits. He also added that each sector of activity had its own minimum wage fixed by collective agreements which provided for the adjustment of wages while the agreements are in force, as for example a collective agreement concluded in the textile industry for a period of six years."

##### **1998 – Uruguay<sup>19</sup>**

"The Employers' members recalled that the questions raised in this case concerned the determination of the minimum wage at an appropriate level and the adoption of proper procedures

<sup>18</sup> [Report of the Committee on the Application of Standards, Part II, 1991, Examination of individual case concerning Convention No. 131, Minimum Wage Fixing, 1970, Uruguay \(ratification: 1977\).](#)

<sup>19</sup> [Report of the Committee on the Application of Standards, Part II, 1998, Examination of individual case concerning Convention No. 131, Minimum Wage Fixing, 1970, Uruguay \(ratification: 1977\).](#)



for its determination. The national trade unions complained that the level of the minimum wage was too low. **The Employers' members noted with respect that the Government had changed its policy for the fixing of minimum wages** since the Committee of Experts had made its previous comments, **following changes to the country's economic policy, which was focused on controlling inflation.** The Government also stated that the system of determining wages had had a direct impact on inflation, since wages were indexed to the inflation rate every four months on a mobile scale. The Government had also stated that its economic policy had to take into account national undertakings with regard to MERCOSUR. However, the national trade unions maintained that this latter argument was only used as an excuse. In its observation, the Committee of Experts had referred to the requirement set out in the Convention for the needs of workers and their families to be taken into account when determining the level of the minimum wage. The Committee of Experts had therefore requested the Government to indicate to what extent, and by what methods, these criteria were taken into consideration, or whether only macroeconomic criteria were considered in the fixing of minimum wages. **The Employers' members emphasized, in this context, that inflation and other macroeconomic factors had a considerable influence on the purchasing power of wages and on employment levels.** The Convention included, among the elements to be taken into consideration in determining the level of minimum wages, the desirability of attaining and maintaining a high level of employment, as well as economic factors and levels of productivity. The second issue raised concerned the procedure for the determination of minimum wages. This varied in the country according to the economic sector. In such sectors as transport, health and construction, minimum wages were determined by negotiation. However, for domestic and agricultural workers, their levels were determined by the Executive. In this respect, the Government representative had stated that it was possible to negotiate wage levels in all sectors. Nevertheless, the Government seemed to exercise influence in all sectors, particularly through the indexation of the minimum wage to inflation. The national trade unions claimed that, in violation of the Convention, all minimum wages were in practice determined by the Government, or unilaterally by employers. From the statement of the Government representative, the Employers' members concluded that there remained areas in which the consultation required by the Convention was not fully implemented. On the two issues raised, the Government should therefore be requested to indicate in a written report how the criteria set out in the Convention, and particularly the needs of workers and their families, were taken into account in the fixing of minimum wages. The Government should also be asked to comply with the provisions of the Convention relating to the consultation that was required with the representatives of employers and workers.”

### **2003 – Uruguay<sup>20</sup>**

“The Employer members stated that the discussions on this case centred around two issues: the criteria and the procedure for establishing a minimum wage. As regards the criteria, they noted that the Government of Uruguay had indicated the need for greater competitiveness and for the aligning of prices with those of its main partners in MERCOSUR. There were, of course, other criteria to be taken into consideration but the problem remained the specific minimum wage itself. Such criteria were not so much legal terms requiring further interpretation; they were rather factors which had to be reconciled. They understood the dissatisfaction of the Worker members with the minimum wage set in reality. **However, it was not up to the Committee of Experts nor this Committee to consider or judge a specific minimum wage or to set or even to fix it.** As regards the procedure for fixing a minimum wage, they noted that they were set unilaterally as indicated in the observation of the Committee. **The question was the relationship between the setting of a minimum wage by law and by collective agreement, especially at the enterprise level. It seemed that differentiated solutions were needed. In any case, representative organizations of employers and workers needed to be consulted.** They noted the statement of the Government

<sup>20</sup> [Report of the Committee on the Application of Standards, Part II, 2003, Examination of individual case concerning Convention No. 131, Minimum Wage Fixing, 1970, Uruguay \(ratification: 1977\).](#)



representative of Uruguay indicating that these organizations did not exist for all sectors and branches of economic activity. Moreover, there seemed to be differences of opinion as to which organizations were representative and thus should be consulted. With reference to the comment of the Committee of Experts regarding existing organizations which could be consulted, they reminded this Committee that it was certainly a question of the constitution of these organizations as to whether they also had the authority to engage in consultations. They supported the request of the Committee of Experts regarding the need for information on collective agreements that fixed wages for specific sectors and branches of economic activity, as indicated in paragraph 9 of the observation. They finally noted that a specific minimum wage could not be fixed or recommended by the Committee of Experts or this Committee, but technical problems in the procedure for fixing a minimum wage could be solved through technical assistance provided by the Office.”