



SEVENTH ITEM ON THE AGENDA

Form for reports on the application of unratified Conventions and Recommendations (article 19 of the Constitution): The Labour Clauses (Public Contracts) Convention, 1949 (No. 94), and Recommendation, 1949 (No. 84)

1. In accordance with the decision taken by the Governing Body at its 291st Session (November 2004), the Committee is requested to examine the appended draft form to be used as a basis for the reports on the Convention and Recommendation which member States will be required to submit in accordance with the recommendations made by the Committee. The report form approved by the Governing Body will also be made available on the ILO web site, and member States will be encouraged to submit their replies in electronic format.
2. *The Committee is invited to decide on the report form for the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), and Recommendation, 1949 (No. 84), and to submit this report form to the Governing Body for approval.*

Geneva, 23 January 2006.

Point for decision: Paragraph 2.

Appendix

Appl. 19
C. 94, R. 84

INTERNATIONAL LABOUR OFFICE
REPORTS ON
UNRATIFIED CONVENTIONS AND RECOMMENDATIONS

*(Article 19 of the Constitution of the
International Labour Organization)*

REPORT FORM FOR THE FOLLOWING INSTRUMENTS:
LABOUR CLAUSES (PUBLIC CONTRACTS) CONVENTION,
1949 (No. 94)
LABOUR CLAUSES (PUBLIC CONTRACTS) RECOMMENDATION,
1949 (No. 84)

Geneva

2006

INTERNATIONAL LABOUR OFFICE

Article 19 of the Constitution of the International Labour Organization relates to the adoption of Conventions and Recommendations by the Conference, as well as to the obligations resulting therefrom for the Members of the Organization. The relevant provisions of paragraphs 5, 6 and 7 of this article read as follows:

5. In the case of a Convention:

...

- (e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.

6. In the case of a Recommendation:

...

- (d) apart from bringing the Recommendation before the said competent authority or authorities, no further obligation shall rest upon the Members, except that they shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

7. In the case of a federal State, the following provisions shall apply:

- (a) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;
- (b) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces or cantons rather than for federal action, the federal government shall:

...

- (iv) in respect of each such Convention which it has not ratified, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement, or otherwise;

- (v) in respect of each such Recommendation, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as have been found or may be found necessary in adopting or applying them.

...

In accordance with the above provisions, the Governing Body of the International Labour Office examined and approved the present form of report. This has been drawn up in such a manner as to facilitate the supply of the required information on uniform lines.

Report to be made no later than 30 April 2007, in accordance with article 19 of the Constitution of the International Labour Organization by the Government of, on the position of national law and practice in regard to the matters dealt with in the following instruments:

Labour Clauses (Public Contracts) Convention, 1949 (No. 94),¹
and

Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84)

adopted by the International Labour Conference at its 32nd Session (Geneva), 1949.²

- I. Please indicate whether any legislative, administrative or other provisions exist in your country in regard to all or some of the matters dealt with in the Convention and the Recommendation.
- (1) If so, please give in summarized form information concerning the legislation, regulations and practice existing in your country with respect to workers' protection in the context of competitive bidding for public contracts, which may facilitate an appreciation of the extent to which effect has been given to the Convention and the Recommendation.
- (a) Please indicate if there are any specific national laws or regulations providing for the insertion of labour clauses in public contracts for the purpose of ensuring to the workers concerned wages, hours of work and other working conditions which are not less favourable than those established for work of the same character in the same area by either collective agreement, arbitration award or national laws or regulations.
 - (b) Please indicate how is defined in national law or practice the term "public contract", or any other similar term used to designate contracts awarded by a public authority for the construction of works, procurement of equipment or supply of services.
 - (c) Please indicate whether the relevant legislation applies to contracts awarded by authorities other than central authorities (e.g. provincial, municipal or other local authorities) or to work carried out by subcontractors or assignees of contracts.
 - (d) Please specify whether the obligation to include labour clauses in public contracts applies to contracts involving the expenditure of public funds exceeding a specified limit and, if so, please indicate this limit.
 - (e) Please state whether any categories of persons (e.g. managerial personnel or other persons occupying positions of technical or scientific character) are excluded from the scope of application of all or any of national laws or regulations regarding labour clauses in public contracts and, if so, please specify the reasons for their exclusion.
 - (f) Please indicate the terms of any standard labour clauses currently in use and specify whether these terms have been determined in consultation with representative employers' and workers' organizations. More concretely, please specify whether labour clauses prescribe, either directly or by reference to appropriate provisions contained in laws or regulations,

¹ Governments of countries which have ratified the Convention and from which a report is due under article 22 of the Constitution will use the present form only with regard to the Recommendation. It will not be necessary to repeat information already provided in connection with the Convention.

² The texts of the Convention and Recommendation are appended.

- collective agreements or arbitration awards, labour conditions such as: (i) the normal and overtime rate of wages to be paid to the workers concerned; (ii) the number of hours that may be worked in any day, week or other specified period; (iii) the average number of hours that may be worked by shift workers; (iv) the averaging of hours of work, as the case may be; (v) holiday and sick leave provisions.
- (g) Please specify the measures by which the persons tendering for contracts are made aware of the terms of the clauses (e.g. by advertising specifications). If possible, please attach specimen copies of public contracts or technical specifications containing labour clauses.
 - (h) Please supply information concerning any specific provisions of national laws, regulations, collective agreements or arbitration awards relating to the health, safety and welfare of the workers engaged in the execution of public contracts, or, where no such provisions exist, please indicate how it is ensured that the workers concerned enjoy fair and reasonable conditions in such matters.
 - (i) As regards compliance with labour conditions prescribed in public contracts, please explain how it is ensured in national law and practice that workers engaged in the execution of public contracts are kept informed of the conditions of work applicable to them, for instance through the posting of notices in conspicuous places at the establishments and workplaces concerned. Please also indicate whether provision is made for the maintenance of adequate records of the time worked by, and the wages paid to, the workers concerned. Where available, please forward specimen copies of such notices or record forms.
 - (j) Please indicate whether a system of inspection or other similar arrangements are in operation to ensure effective enforcement. Please give information concerning sanctions, such as the withholding of contracts, for failure to observe and apply the provisions of labour clauses in public contracts and also describe any other appropriate measures, such as the withholding of payment under the contract, which would enable the workers concerned to recover unpaid wages.
 - (k) Please give particulars concerning any other aspect of national law and practice which you might consider relevant for the purposes of the present report although not specifically related to points (a)-(j) above.
- (2) Please supply general information on any impact globalization may have had on national law and practice regarding labour clauses in public contracts.
 - (3) If copies of the national laws and regulations, collective agreements or relevant court decisions cited in the present report have not already been supplied to the International Labour Office, please attach the same together with any other available documents concerning the effect given to the provisions of the Convention and the Recommendation. Where appropriate, please provide practical information, for instance up-to-date statistics on the number of public contracts awarded and the number of workers concerned, inspection results, etc.
- II. (1) Please indicate whether any modifications have been made in the national legislation or practice with a view to giving effect to all or some of the provisions of the Convention or of the Recommendation.
- (2) Please state also whether it is intended to adopt measures to give further effect to the provisions of the Convention or of the Recommendation.

- (3) Please state, where appropriate, any difficulties due to the Convention, to the national law or practice, or to any other reason, which may prevent or delay the ratification of the Convention.
- III. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization.
- IV. Please state whether you have received from the organizations of employers or workers concerned any observations concerning the effect given, or to be given, to the instruments to which the present report relates. If so, please communicate a copy of the observations received together with any comments that you may consider useful.

Federal States

- (1) Please indicate whether the provisions of the Convention or of the Recommendation are regarded by the federal government as appropriate, under the constitutional system, for federal action or as appropriate, in whole or in part, for action by the constituent states, provinces or cantons, rather than for federal action.
- (2) Where federal action is appropriate, please give the information specified in points I, II, III and IV of this form.
- (3) Where action by the constituent units is regarded as appropriate, please supply general information corresponding to points I, II, III and IV of the form. Please indicate also any arrangements it has been possible to make within the federal State, with a view to promoting coordinated action to give effect to all or some of the provisions of the Convention and of the Recommendation, giving a general indication of any results achieved through such action.