

LABOUR CLAUSES (PUBLIC CONTRACTS)
CONVENTION, 1949 (No. 94)
AND RECOMMENDATION (No. 84)

A practical guide

International Labour Office Geneva 2008

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Public procurement refers to the government's activity of purchasing the goods and services which it needs to carry out its functions – ranging from paper to missiles, from construction to street cleaning, from vehicle maintenance to information technology services.

(S. Arrowsmith and A. Davies, eds., *Public Procurement: Global Revolution*, 1998)

1. The Labour Clauses (Public Contracts) Convention No. 94 and Recommendation No. 84

The Labour Clauses (Public Contracts) Convention and the accompanying Recommendation have their origins in legislation introduced in Great Britain at the turn of the 20th century and similar legislation later adopted by the United States regarding the use of “fair wages” clauses in government contracts. Convention No. 94 and Recommendation No. 84 were adopted in 1949, at the time of the post-Second World War reconstruction, soon after the creation of the United Nations and the World Bank. The need to rebuild a huge number of public infrastructures and to promote the development of ruined economies led to a significant rise in public contracting.

The rationale behind the adoption of Convention No. 94 and Recommendation No. 84 lies in the desire to prevent public authorities from entering into contracts involving the employment of workers – whether for construction of public works, manufacture of goods or supply of services – at conditions below an acceptable level of social protection, and moreover, to encourage public authorities to raise the bar and act as model employers.

The Convention is about good governance. It addresses socially responsible public procurement by requiring bidders/contractors to align themselves with the locally established prevailing pay and other working conditions as determined by law or collective bargaining.

As of September 2008, 58 member States were bound by Convention No. 94, the last ratification having been registered in 2005. In September 1982, the United Kingdom denounced the Convention.

Following an examination of the current relevance of Convention No. 94 by the Working Party on Policy regarding the Revision of Standards, the Governing Body decided in November 1998 (a) to invite member States to contemplate ratifying Convention No. 94, and (b) that the Working Party, or the LILS Committee of the Governing Body, re-examine the status of Convention No. 94 in due course.¹ It is also to be noted that, in 2007, the Committee on Sustainable Enterprises of the International Labour Conference concluded that “the ILO should promote the ratification and application of the international labour Conventions relevant to the promotion of sustainable enterprises”, including

¹ GB.273/LILS/4 (Rev.1), para. 26 and GB.273/8/2, para. 7.



Convention No. 94, and that it “should work with international, multilateral and bilateral institutions in order to ensure sustainable procurement and lending practices that demonstrate an understanding and application of the principles contained in international labour standards and the MNE Declaration”.²

In 2007, the ILO Committee of Experts on the Application of Conventions and Recommendations completed the first comprehensive General Survey ever conducted on the application of the Convention. It considered that given the impact of globalization and the intense competition, “the objectives of the Convention were even more valid today than they were 60 years ago, and strengthened the ILO’s call for fair globalization”.³ Considering Convention No. 94 to be an “underused instrument”, the Committee of Experts expressed the view that “the purpose and object of the Convention remained intrinsically sound” and there was “real potential in infusing new life into the Convention and making it the focus for socially responsible public procurement operations”.⁴ In June 2008, the Conference Committee on the Application of Standards devoted part of its general discussion to the examination of the findings of the Committee of Experts, particularly as regards the present day relevance of Convention No. 94, and more generally, with respect to the social dimensions of public procurement.⁵

This Practical Guide was prepared drawing principally on the conclusions of the afore-mentioned General Survey and the ensuing discussion in the Conference Committee to help better understand the requirements of the Convention, and ultimately improve their application in law and practice.

² ILC, 96th Session, 2007, *Record of Proceedings*, pp. 15/103, 15/106, paras 19, 25. In 2008, in its conclusions on promoting rural employment for poverty reduction, the International Labour Conference considered that “the conclusions of the 2007 discussion on the promotion of sustainable enterprises [...] in their entirety provided a relevant framework for promoting sustainable rural enterprises”; see ILC, 97th Session, 2008, *Record of Proceedings*, p. 15/66, para. 28.

³ ILC, 97th Session, 2008, *Report III(Part 1B)*, para. 308.

⁴ *Ibid.*, paras 314-315.

⁵ ILC, 97th Session, 2008, *Record of Proceedings*, pp. 19/24-19/43, paras 73-139.



Public procurement involves the purchasing by government from private sector contractors, usually on the basis of competitive bidding, of goods and services that government needs.[...] It is interesting to examine how governments use *government contracting* to produce social justice results. The particular issue is how government attempts to combine the three functions of government: *participating* in the market but *regulating it at the same time*, by using its *purchasing power* to advance conceptions of social justice.

(C. McCrudden, *Buying Social Justice - Equality, Government Procurement and Legal Change*, 2007)

2. The relevance of labour clauses in public contracts

Public investment through procurement contracts continues to represent a high proportion of formal economic activity in both developed and developing countries.

In recent years there have been many important developments in the public procurement sector. At the international level, different institutions have launched initiatives for the harmonization of procurement rules and practices, such as the adoption of the Model Law on Procurement by the United Nations Commission on International Trade Law (UNCITRAL) in 1994, the entry into force of the Agreement on Government Procurement of the World Trade Organization (WTO) in 1996, the development of harmonized conditions of contract by the Multilateral Development Banks, or the use of Country Procurement Assessment Reports by the World Bank as a diagnostic tool to help borrower countries improve their procurement system. At the national level, new forms of government contracting have appeared, notably “public-private partnerships” (PPPs), which involve complex legal and financial arrangements to ensure the funding for and carrying out of large infrastructure projects, especially in the transport, energy, telecommunications, public health, waste management and water distribution sectors.

Most importantly, there has been a strong movement towards comprehensive reform of national public procurement laws and policies. The emphasis has been on eliminating corruption; increasing efficiency and transparency in procurement processes; establishing equal treatment between firms; and opening up markets to international competition.

Today, the predominant view posits that “best value for money” is the primary objective of public procurement policy. At the same time, the increased recognition of the rights-based approach in United Nations human rights instruments and the growing awareness among multinationals of the importance of corporate social responsibility have gradually given rise to the concept of “sustainable public procurement”. This refers to the need to balance the economic, social and environmental outcomes of public procurement practices, or, in other words, combine economic performance with social considerations.

Even though the linkage between sustainable public procurement and core labour standards seems to be widely recognized, Convention No. 94 has

Public procurement accounts, on average, for 15 per cent of the gross national product (GDP) worldwide, and is even higher in countries members of the Organization for Economic Co-operation and Development (OECD), where that figure is estimated at approximately 20 per cent of GDP.

(OECD, *Public Procurement: The Role of Competition Authorities in Promoting Competition*, Policy Roundtable on Public Procurement, June 2007)

Procurement under World Bank-financed projects results in the award of about 20-30,000 contracts with a total value of about USD 20 billion each year.

(<http://www.worldbank.org/>)



Sustainable procurement means improving the efficiency of public procurement and at the same time using public market power to bring about major environmental and social benefits locally and globally. At its most basic this can mean simply making sure you always buy recycled paper or fair trade coffee. At its most comprehensive it means systematically integrating environmental and social considerations into all procurement activities, whether purchasing goods, services or works - from defining the true needs, to setting appropriate technical specifications and evaluation procedures, to monitoring performance and results.

Sustainable procurement aims at *reducing environmental impacts, achieving financial efficiency* but also *encouraging social improvement*. Purchasing actions have social implications, and public procurement can be used to drive social improvements - whether this is guaranteeing good working conditions for publicly contracted construction workers, ensuring disabled access in public buildings, providing new employment opportunities for marginalised groups, working against child labour or supporting fair trade.

(Procura+ Manual – A guide to cost-effective sustainable public procurement, 2nd ed., 2007. Procura+ is a campaign launched in 2004 by ICLEI – Local Governments for Sustainability to help support public authorities across Europe in implementing sustainable procurement)

attracted little attention. According to the ILO Committee of Experts, only about one fourth of the 58 member States which have ratified the Convention are substantially implementing it, and it appears that the Convention's requirements are not always well-understood.

This led the Committee of Experts to conclude in its recent General Survey that the Convention may need to be revisited to enable the ILO to provide appropriate responses to current challenges, such as the growing importance of public-private partnerships, subcontracting, global sourcing and the complexities of supply chain management as well as the increasing devolution and decentralization of public procurement policies and decisions. A possible revision of the Convention would also allow to synchronize its provisions with the fundamental principles and rights at work set forth in the 1998 ILO Declaration.

The Committee stressed, however, that even without partial revision the Convention remains intrinsically sound and provides a normative platform on which the ILO could build a comprehensive standard for the promotion of decent labour conditions in public contracts.



The harmonized conditions of contract originally prepared by the International Federation of Consulting Engineers (FIDIC) and used by a number of Multilateral Development Banks (MDBs) contain a requirement on rates of wages and conditions of labour that reads:

... the Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

3. Convention No. 94: An Overview

Convention No. 94 deals with three principal aspects of public procurement: (i) the types of public contracts that should contain labour clauses; (ii) the prescriptive content of labour clauses; and (iii) the means for ensuring compliance with the provisions of labour clauses.

(i) Which contracts?

The Convention requires labour clauses to be inserted in all procurement contracts for construction, goods, or services which are (a) concluded by a government authority, (b) involve the expenditure of public funds, and (c) include the employment of workers. In addition, the Recommendation provides that labour clauses should be used where private employers are granted subsidies or are licensed to operate a public utility.

The Convention allows exemptions for low-value contracts and persons employed in managerial, technical or scientific positions.

(ii) What type of labour clauses?

The Convention requires the insertion of clauses into public contracts to (a) ensure that workers are entitled to wages, hours of work and other labour conditions at least as good as those normally observed for the kind of work in question in the area where the contract is executed, and (b) also ensure that higher local standards, if any, are applied.

In the absence of collectively agreed wages and other working conditions in the place of execution of the contract, applicable standards should at least be aligned with those found in collective agreements of the nearest district for work of the same character, or with the general level observed in the trade or industry concerned.

(iii) What enforcement measures?

The Convention requires the posting of notices at the workplace to inform workers of the applicable wage and other conditions of work in accordance with the terms of the labour clauses. It also provides for specific remedies for non-observance of the provisions of labour clauses, such as excluding a contractor from participating in future tendering, or suspending the payment of sums owed under a contract.



The objectives of Convention No. 94 and Recommendation No. 84 are twofold:

- First, to remove wages, working time and working conditions being used as elements of competition among bidders for public contracts, by requiring that all bidders respect, as a minimum, certain locally established standards.
- Second, to ensure that public contracts do not exert downward pressure on wages and working conditions by placing a standard clause in the public contract to the effect that workers employed to carry out the contract shall receive wages and shall enjoy working conditions that are no less favourable than those established for the same work in the area where the work is being done by collective agreement, arbitration award or national laws and regulations.

In short, Convention No. 94 does not establish labour standards but requires that existing standards in a district/industry be effectively applied. The aim of the Convention is to remove wages and working conditions from the price competition necessarily involved in public tendering. Therefore, the Convention requires bidders to be informed in advance, by means of standard labour clauses included in tender documents, that, if selected, they would have to observe in the performance of the contract wages and other labour conditions not less favourable than the highest minimum standards established locally by law, arbitration or collective bargaining. Bidders should prepare their offers accordingly. The Convention proposes a common level playing field – in terms of labour standards – for all economic actors, and thus promotes fair competition and socially responsible procurement. Most importantly, the Convention enables contracting authorities to evaluate bids based on objective criteria, such as the efficiency of production methods, the quality of materials, or long-term benefits including technology transfer, which ultimately leads to cost-effective public procurement operations and contributes to sound economic development.

The size of the informal economy in many developing countries poses serious challenges to the practical implementation of the Convention. For instance, an estimated 34 per cent of the workforce in Brazil (2003), 41 per cent in Mali (2004) and 46 per cent in India (2000) is employed in the informal economy. (ILO, *Key Indicators of the Labour Market* (KILM), 5th edition, 2007)

The situation is often worse in the construction industry; for instance, almost 98 per cent of construction workers in India are in informal employment. (N.S. Sastry, *Estimating informal employment and poverty in India*, UNDP India, 2004)



4. A Closer Look - Frequently Asked Questions

1 Does the Convention regulate the status of civil servants?

NO. Convention No. 94 is about procurement contracts in the public sector, not about the employment contracts of public employees. Public contracts are those concluded between a government and a private contractor for the construction of public works, the manufacture of goods or the supply of services, globally known as public procurement. However, Convention No. 94 deals with employment conditions in that it regulates the wages and working conditions applicable to the employees engaged by the private contractor for the execution of the public contract.

2 Does the Convention apply to contracts awarded by local governments, city councils or semi-public bodies?

Convention No. 94 applies to contracts awarded by “public”, “central authorities”, but leaves it to the ratifying State to define these terms. Its main focus is on contracts awarded by bodies of central government, such as ministries; however, it is left to the discretion of the national authorities to extend the scope of the Convention to contracts awarded by other public law entities, such as regions, provinces, municipalities, port authorities, etc. Unless competent authorities opt for a broad application of the Convention, contracts awarded by local government authorities are not covered by the Convention.

3 Does the Convention refer exclusively to construction projects?

NO. The Convention applies to *all public contracts*, whether for *works* (e.g. construction of a new highway or extension of an airport terminal), *goods* (e.g. manufacture of new uniforms for customs officers or procurement of computer hardware for a ministry) or *services* (e.g. cleaning or IT services). It is true that the construction industry, as a labour-intensive activity often associated with manual work is most often cited, but the scope of the Convention is not in any manner limited to public works.

Research shows that more than 50 per cent of public purchasing in the European Union is carried out at regional and local levels.

(Cities As Responsible Purchasers in Europe (CARPE), *Guide to Responsible Procurement*, 2005.

This initiative brings together 12 European cities in exploring opportunities for adopting social and environmental criteria in their procurement practices)

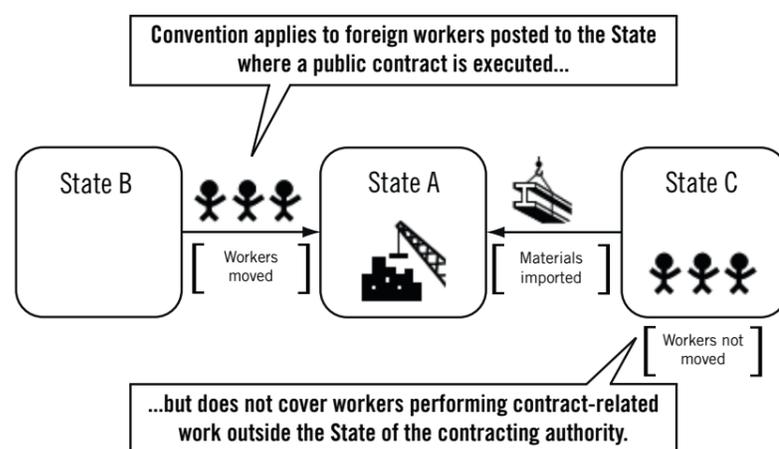
Whether the Convention applies to new forms of public procurement, such as *Public-Private Partnerships (PPPs)* is not always clear. PPPs involve complex legal and financial arrangements that may or may not imply “the expenditure of funds by a public authority” and “the employment of workers by the other party to the contract”.

4 Are subcontractors concerned?

YES. National authorities must take all appropriate measures to ensure the application of the Convention to subcontractors and assignees of public contracts. However, the main contractor may have recourse to a number of other operators/providers in order to execute a public contract and the question as to whether the Convention covers the entire supply chain needs to be considered on a case-by-case basis. For the purpose of Convention No. 94, the decisive criterion is the employment of workers in the performance of the public contract in question. For example, when a supplier provides stock in trade (i.e. raw materials or merchandise held for sale) to a public contractor that employs persons to finish the order for manufactured goods, the supplier cannot be seen as a subcontractor. If, however, the supplier manufactures to specification an input to the final product ordered under a public contract, he/she ought to be considered a subcontractor. As the Convention does not cover supply contractors of a cross-border nature (see question 5 below), it neither covers supply sub-contractors abroad.

5 Does the Convention apply to cross-border public procurement contracts?

Although the Convention is silent on this point, the dominant focus at the time of adoption was clearly work carried out within the borders of the State of the contracting entity. This does not mean, however, that all contracts with a transnational dimension are excluded from the coverage of the Convention; in the case of contracts involving the use of foreign workers brought for the purpose of the contract, labour clauses would apply. By way of example, if a public contract for the construction of a school is concluded between the authorities of State A and an enterprise established in State B, construction workers employed by the foreign contractor and moved into the territory of State A for the execution of the contract would enjoy the protection afforded by the labour clauses contained in that contract. On the contrary, work done outside the contracting State is not covered by the provisions of the Convention. To use the same example, workers employed in State C for the production of materials, which would subsequently be imported and used in State A



for the construction of the school, would fall outside the scope of the labour clauses. Since the Convention does not cover supply contracts of a cross-border nature, its application cannot be regarded as a non-tariff trade barrier, as has sometimes been suggested.

6 Does the Convention allow for exceptions?

YES. First, national authorities may exempt *low value contracts* which do not exceed a fixed amount. Second, national authorities may decide that the labour clauses will not apply to certain *non-manual workers* whose conditions of employment are not regulated by national laws or regulations, collective agreements or arbitration awards. However, in both cases employers' and workers' organizations must be consulted in advance, in order to prevent possible abuses.

7 Is there still a need for labour clauses when the Labour Code applies to all workers and to all contracts?

YES. The Convention aims at ensuring that workers employed in the execution of public contracts enjoy working conditions that are not less favourable than those established by collective agreement, arbitration award, or by national legislation for work of the same type carried out in the same

In some cases, national legislation provides that contracting authorities *may reject abnormally low bids*, taking into account the provisions on working conditions in force where the work is carried out. Such clauses do not afford the level of protection required by the Convention and therefore are not sufficient to give effect to its requirements.

region. In practice, this means that contractors have to offer to the workers concerned wages and working conditions that are not less favourable than the highest minimum standard locally established either through law, arbitration award or collective agreement. In many countries, labour legislation only establishes minimum standards which are raised, for instance, through collective bargaining. In such cases, the applicability of general labour legislation to the conditions under which public contracts are carried out is insufficient to ensure the implementation of the Convention. Besides, there is more in Convention No. 94 than simply obliging contractors to abide by collectively agreed pay rates. For instance, the types of sanctions envisaged by the Convention in case of non-observance of the terms of labour clauses (such as prohibition to tender or withholding of payments) may be more effective than those provided for in the general labour legislation.

8 Is certification sufficient to apply the Convention?

NO. In some countries, economic operators wishing to participate in public tendering are required to produce a certificate attesting their compliance with tax, social security and labour laws and regulations in force. These “filtering” mechanisms at the pre-selection stage may be useful as they offer some evidence about tenderers’ past performance record including respect for social obligations. However, they are not directly relevant to the principal obligation of the Convention since they bear no relation to, nor do they guarantee the labour standards to be observed in the execution of the public contract under tender.

9 Is it necessary to enact specific legislation?

NO. The burdensome and lengthy processes sometimes involved in the legislative exercise can be avoided since the Convention may also be applied through administrative instructions or circulars. If the government chooses to implement the Convention through legislative provisions, it may include specific provisions to this end either in the Labour Code or in the public procurement legislation. Whatever the nature of the implementing

text, it must provide for the insertion of labour clauses in all public contracts to which Convention No. 94 applies. The application of the Convention through practice or usage alone is not sufficient to give effect to its substantive requirements.

10 What action is required regarding occupational safety and health?

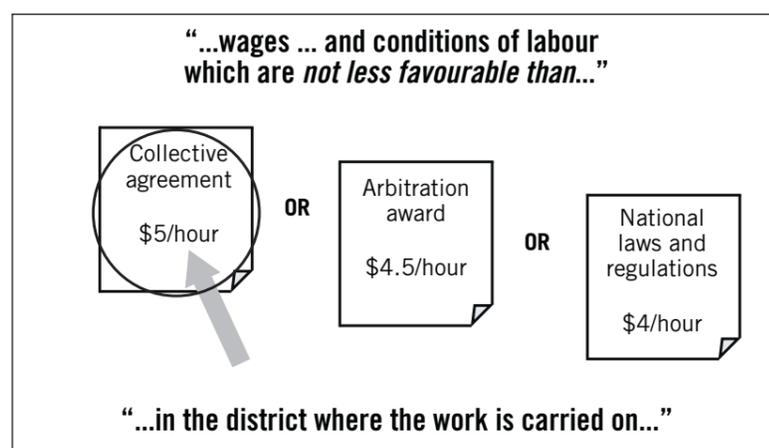
National authorities must take adequate measures to ensure fair and reasonable conditions of health, safety and welfare for the workers engaged in the execution of public contracts if such protection is not already afforded through national laws or regulations, collective agreements or arbitration awards. Those measures should aim at preventing occupational accidents or diseases. Therefore, requiring contractors to have insurance to guarantee the payment of worker compensation in case of occupational injury is not sufficient in itself to meet the requirements of the Convention. In most cases, workers in the formal economy engaged in the execution of public contracts are covered by health and safety legislation of general application. In some cases, specific clauses on occupational safety and health are included in contractual documents, particularly in contracts for construction work. This is probably due to the particular risks faced by workers in the construction industry and to the financial liability involved where workers are injured on the job.

11 What aspects of the labour relationship should be regulated through labour clauses?

Convention No. 94, which sets general principles, provides that labour clauses should deal with wages (including allowances), hours of work and other conditions of labour. Recommendation No. 84 provides further guidance on the possible content of the labour clauses to be included in public contracts. Such clauses may, for instance, include provisions concerning (a) the normal and overtime rate of wages for the different categories of workers concerned; (b) the regulation of working time; and (c) holiday and sick leave entitlements.

12 How are the level of wages and other working conditions to be determined in practice?

In most instances, offering labour conditions with reference to best local practice means that the State would act as a model employer setting the example and not allowing labour conditions to fall below the local reference level. Concretely, to determine the applicable standards for the execution of a public contract, a survey of the applicable national laws or regulations must be made for each standard included in the labour clause (wages, working hours, weekly rest, etc.), followed by an assessment to see if those standards have been increased through arbitration awards or collective agreements. Once an assessment of these criteria has been made, the applicable standard in accordance with the Convention can be set.



13 What is the role of the social partners in the formulation of labour clauses?

The terms of labour clauses to be inserted in public contracts must be determined by the competent national authority in the manner considered most appropriate to the national conditions, *after consultation* with the employers' and workers' organizations concerned. Such a formulation is deliberately broad

to allow for sufficient flexibility as regards the procedure to be followed. There is no need for new consultations every time a public contract is awarded. They may be held only at the time of drafting or amending the standard labour clauses to be included in model bidding documents and contract forms.

14 Can any collective agreement be used as a benchmark?

NO. Only those collective agreements which cover a substantial proportion of the employers and workers in a particular trade or industry may be used as a reference. Collective agreements which are not generally applicable in a sector or a region but may apply to only one enterprise, or a limited group of enterprises, are not relevant for the assessment of applicable wages and working conditions. Where no relevant collective agreement exists in the region where the public contract is to be carried out, reference should be made to agreements concluded in the nearest region or to the general level of wages and other working conditions observed in the same industry by employers in a similar situation.

15 Do tenderers need to be informed of the content of the labour clauses?

YES. Governments must take appropriate measures to ensure that tenderers are aware of the terms of the clauses so that they can appropriately incorporate the resulting labour costs into their bids. The choice of means to ensure such publicity, such as advertising specifications, is left to national authorities. However, the insertion of labour clauses in the specifications or general conditions of tender documents is not sufficient to give effect to the basic requirement of the Convention, which is the inclusion of a labour clause as an integral part of the contract. Therefore, advertising the terms of labour clauses at the pre-award stage may precede and complement, but cannot replace, the inclusion of labour clauses in the contracts themselves.

16 Do workers need to be notified of the provisions of labour clauses?

YES. The laws, regulations or other instruments giving effect to the provisions of the Convention must be brought to the attention of all persons

concerned. In addition, they must provide for the posting of notices in conspicuous places at the workplace with a view to informing the workers of their conditions of work. Furthermore, unless other effective arrangements are already in place, the implementing legislation must provide for keeping adequate records of the time worked, and wages paid for the workers concerned. This facilitates labour inspection and thus offers additional protection to those workers.

17 What measures can be taken against contractors for non-observance of the labour clauses?

Convention No. 94 is at the crossroads between administrative and labour law. Hence two sets of sanctions may be imposed on contractors. Labour legislation normally provides for a wide range of sanctions, varying from the payment of civil damages or administrative fines to penal sanctions, including imprisonment. However, two specific types of measures provided for in the Convention might be more effective, as they relate to the performance of the public contract. First, national authorities must provide for adequate sanctions, such as the withholding of contracts when contractors fail to comply with the terms of the labour clauses. Second, they must take measures, such as the withholding of payments due under the contract, so that the workers concerned can receive the wages to which they are entitled. Such measures are of course without prejudice to any other remedies (e.g. judicial proceedings) that may be available.

18 Does the Convention allow for other social considerations to be taken into account in public procurement operations?

YES. The core requirement of the Convention is the insertion of labour clauses covering wages, hours of work and other working conditions in all public contracts to which it applies. It does not preclude, however, the application of other social criteria at either the pre-selection or the post-award stage of the tendering process. This, for instance, could take the form of clauses requiring compliance with *core labour standards*, such as provisions aimed at preventing

Under paragraph 3 of the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), each Member State should, among other things, make eligibility for contracts involving the expenditure of public funds dependent on observance of the principles of non-discrimination in respect of employment and occupation.

the use of child labour or anti-union practices, or *affirmative action measures* with a view to promoting the employment of women or of vulnerable groups. In practice, a number of countries use public procurement contracts to pursue broader social policy objectives, such as the promotion of employment for long-term unemployed, young persons, disabled or migrant workers, etc.



The 1998 ILO Declaration on Fundamental Principles and Rights at Work and Convention No. 94 proceed in parallel directions and certainly share common objectives. Indeed, what would be the point of pressing for the application of collectively agreed wages under Convention No. 94 if collective negotiation is not recognized? What would be the value of claiming higher standards for overtime pay and paid holidays for public contract workers if forced labour or child labour are not first eradicated? This underscores the complementarity of the two sets of principles and the importance of Convention No. 94 as a possible mechanism for promoting core labour standards.

(ILO Committee of Experts, General Survey on Labour Clauses in Public Contracts, 2008)

5. A Closer Look - Legislative Examples

The following legislative provisions reflect the requirements of Article 2 of the Convention regarding the inclusion of labour clauses in public contracts:

137. Every public contract shall be deemed to include and to incorporate the provisions, conditions or stipulations set forth in this Part to all intents and purposes as if the same were expressly set out as conditions or covenants therein to be observed and performed on the part of either or both of the parties to the contract.

138. The contractor shall pay rates of wages and observe hours and conditions of labour not less favourable than those established, in the trade or industry in the district where the work is carried out, by agreement, machinery of negotiation or arbitration to which the parties are organisations of employers and trade unions representative respectively of substantial proportions of employers and workers engaged in the trade or industry in the district (hereinafter referred to as established rates and conditions) or, failing such established rates and conditions in the trade or industry in the district, established rates and conditions in other districts where the trade or industry is carried on under similar general circumstances.

139. In the absence of any such agreement or established rates and conditions as defined in section 138, the contractor shall pay rates and wages and observe hours and other conditions of labour not less favourable than those which are or would be paid and observed by Government in the trade in the district where the work is carried out. [...]

141. In the event of any difference or dispute arising as to what wages ought to be paid, or what hours or other working conditions ought to be observed in accordance with the requirements of section 138 it shall, if not otherwise disposed of, be referred by the Commissioner to the Minister who may, if he thinks fit, refer the matter to an arbitration tribunal in accordance with the provisions of the Trade Disputes (Arbitration and Inquiry) Act. In arriving at its decision the tribunal, in the absence of any established rates and conditions in the trade or industry concerned as

specified, in section 138 shall have regard to any agreement, custom, practice or award that may be brought to its notice relating to the wages, hours or conditions of labour of persons employed in a capacity similar to that of the person to whom the difference or dispute relates in trade or industries carried on under similar general circumstances. [...]

143.-(1) A subcontractor shall be bound in all cases to conform to the conditions of the main contract and the main contractor shall be responsible for the observance of all contract conditions on the part of the subcontractors.

(Source: *Belize*, Labour Act (Cap. 297), Revised Edition 2000)

The following legislative provisions give effect to the provisions of Article 5 of the Convention regarding the measures to be taken in case of non-compliance with the labour clauses:

141. Where the Labour Commissioner is satisfied that a contractor has defaulted in the payment of wages due to any employee employed on a contract, he may, failing payment of such wages by the contractor, arrange for the payment of the wages to the employee out of any sum payable to the contractor under the contract and the amount so paid shall be deemed to be a payment to the contractor. [...]

143. Where a contractor fails to comply with any of the requirements of this Part, the Government may, upon the recommendation of the Labour Commissioner, withdraw its approval of such contractor as an approved contractor for such period and on such conditions as the Government may determine.

(Source: *Swaziland*, Employment Act, 1980)

General administrative specifications of a social nature in public contracts, adopted by the municipal authorities of Seville (Spain) in May 2007

On 24 May 2007, the city of Seville adopted general administrative specifications of a social nature applicable to public contracts for construction works and services of a value exceeding 150,000 euros and of an estimated duration exceeding nine months.

– *General obligations:* (i) compliance with labour standards set out in applicable collective agreements, either at the sector or enterprise level, the Labour Code (Workers' Statute) and the General Social Security Act; (ii) for enterprises employing more than 50 persons, at least 2 per cent should be workers with disabilities; (iii) subcontracting may not exceed 50 per cent of the total contract value and the public authorities need to be notified in advance; (iv) the prevention of occupational accidents needs to be integrated at all levels.

– *Specific obligations:* (i) at least 10 per cent of workers should be persons experiencing difficulties in access to employment (e.g. women, young persons, persons over 45 years of age, long-term unemployed, migrants, persons suffering from incapacity exceeding 33 per cent); (ii) every enterprise with fewer than 40 per cent of women workers on its payroll has to engage during the execution of the contract at least one woman employee or transform a temporary contract of at least one woman employee into a permanent contract; (iii) in the case of contracts for services, at least 30 per cent of the personnel involved in the provision of the service must be employed under permanent contracts; (iv) the need to undertake awareness-raising activities and training during working hours on the rights established in labour laws or collective agreements relating to the balance between work and the family responsibilities of workers.

These provisions go beyond the requirements of Convention No. 94. As it has been pointed out by the Committee of Experts in its General Survey (para. 46), the Convention does not preclude the insertion in public contracts of other types of clauses, such as those requiring compliance with core labour standards as reflected in the ILO's fundamental Conventions (see question 18 above).

Text of Convention No. 94
concerning labour clauses in public contracts

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and
Having decided upon the adoption of certain proposals concerning labour clauses in public contracts, which is the sixth item on the agenda of the session, and
Having determined that these proposals shall take the form of an international Convention,
adopts this twenty-ninth day of June of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Labour Clauses (Public Contracts) Convention, 1949:

Article 1

1. This Convention applies to contracts which fulfil the following conditions:
 - (a) that one at least of the parties to the contract is a public authority;
 - (b) that the execution of the contract involves —
 - (i) the expenditure of funds by a public authority; and
 - (ii) the employment of workers by the other party to the contract;
 - (c) that the contract is a contract for —
 - (i) the construction, alteration, repair or demolition of public works;
 - (ii) the manufacture, assembly, handling or shipment of materials, supplies or equipment;
or
 - (iii) the performance or supply of services; and
 - (d) that the contract is awarded by a central authority of a Member of the International Labour Organisation for which the Convention is in force.
2. The competent authority shall determine the extent to which and the manner in which the Convention shall be applied to contracts awarded by authorities other than central authorities.
3. This Convention applies to work carried out by subcontractors or assignees of contracts; appropriate measures shall be taken by the competent authority to ensure such application.
4. Contracts involving the expenditure of public funds of an amount not exceeding a limit fixed by the competent authority after consultation with the organisations of employers and workers concerned, where such exist, may be exempted from the application of this Convention.
5. The competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, exclude from the application of this Conven-

tion persons occupying positions of management or of a technical, professional or scientific character, whose conditions of employment are not regulated by national laws or regulations, collective agreement or arbitration award and who do not ordinarily perform manual work.

Article 2

1. Contracts to which this Convention applies shall include clauses ensuring to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on —

- (a) by collective agreement or other recognised machinery of negotiation between organisations of employers and workers representative respectively of substantial proportions of the employers and workers in the trade or industry concerned; or
- (b) by arbitration award; or
- (c) by national laws or regulations.

2. Where the conditions of labour referred to in the preceding paragraph are not regulated in a manner referred to therein in the district where the work is carried on, the clauses to be included in contracts shall ensure to the workers concerned wages (including allowances), hours of work and other conditions of labour which are not less favourable than —

- (a) those established by collective agreement or other recognised machinery of negotiation, by arbitration, or by national laws or regulations, for work of the same character in the trade or industry concerned in the nearest appropriate district; or
- (b) the general level observed in the trade or industry in which the contractor is engaged by employers whose general circumstances are similar.

3. The terms of the clauses to be included in contracts and any variations thereof shall be determined by the competent authority, in the manner considered most appropriate to the national conditions, after consultation with the organisations of employers and workers concerned, where such exist.

4. Appropriate measures shall be taken by the competent authority, by advertising specifications or otherwise, to ensure that persons tendering for contracts are aware of the terms of the clauses.

Article 3

Where appropriate provisions relating to the health, safety and welfare of workers engaged in the execution of contracts are not already applicable in virtue of national laws or regulations, collective agreement or arbitration award, the competent authority shall take adequate measures to ensure fair and reasonable conditions of health, safety and welfare for the workers concerned.

Article 4

The laws, regulations or other instrument giving effect to the provisions of this Convention —

- (a) shall —
- (i) be brought to the notice of all persons concerned;
 - (ii) define the persons responsible for compliance therewith; and
 - (iii) require the posting of notices in conspicuous places at the establishments and workplaces concerned with a view to informing the workers of their conditions of work; and
- (b) shall, except where other arrangements are operating to ensure effective enforcement, provide for the maintenance of —
- (i) adequate records of the time worked by, and the wages paid to, the workers concerned; and
 - (ii) a system of inspection adequate to ensure effective enforcement.

Article 5

1. Adequate sanctions shall be applied, by the withholding of contracts or otherwise, for failure to observe and apply the provisions of labour clauses in public contracts.

2. Appropriate measures shall be taken, by the withholding of payments under the contract or otherwise, for the purpose of enabling the workers concerned to obtain the wages to which they are entitled.

Article 6

There shall be included in the annual reports to be submitted under article 22 of the Constitution of the International Labour Organisation full information concerning the measures by which effect is given to the provisions of this Convention.

Article 7

1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage of development of the area, the competent authority considers it impracticable to enforce the provisions of this Convention, the authority may, after consultation with the organisations of employers and workers concerned, where such exist, exempt such areas from the application of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.

2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation any areas in respect of which it proposes to have recourse to the provisions

of the present Article and shall give the reasons for which it proposes to have recourse thereto; no Member shall, after the date of its first annual report, have recourse to the provisions of the present Article except in respect of areas so indicated.

3. Each Member having recourse to the provisions of this Article shall, at intervals not exceeding three years, reconsider in consultation with the organisations of employers and workers concerned, where such exist, the practicability of extending the application of the Convention to areas exempted in virtue of paragraph 1.

4. Each Member having recourse to the provisions of this Article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of this Article and any progress which may have been made with a view to the progressive application of the Convention in such areas.

Article 8

The operation of the provisions of this Convention may be temporarily suspended by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, in cases of force majeure or in the event of emergency endangering the national welfare or safety.

[...]

Text of Recommendation No. 84
concerning labour clauses in public contracts

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and
Having decided upon the adoption of certain proposals concerning labour clauses in public contracts, which is the sixth item on the agenda of the session, and
Having decided that these proposals shall take the form of a Recommendation supplementing the Labour Clauses (Public Contracts) Convention, 1949,
adopts this twenty-ninth day of June of the year one thousand nine hundred and forty-nine the following Recommendation, which may be cited as the Labour Clauses (Public Contracts) Recommendation, 1949:

The Conference recommends that each Member should apply the following provisions as rapidly as national conditions allow and report to the International Labour Office as requested by the Governing Body concerning the measures taken to give effect thereto:

1. In cases where private employers are granted subsidies or are licensed to operate a public utility, provisions substantially similar to those of the labour clauses in public contracts should be applied.
2. Labour clauses in public contracts should prescribe, either directly or by reference to appropriate provisions contained in laws or regulations, collective agreements, arbitration awards or other recognised arrangements —
 - (a) the normal and overtime rate of wages (including allowances) to be paid to the various categories of workers concerned;
 - (b) the manner in which hours of work are to be regulated, including wherever appropriate —
 - (i) the number of hours that may be worked in any day, week or other specified period in respect of which normal rates of wages are to be paid;
 - (ii) the average number of hours that may be worked by persons working in successive shifts on continuous processes; and
 - (iii) where hours of work are calculated as an average, the period of time over which this average may be calculated and the normal maximum number of hours that may be worked in any specified period;
 - (c) holiday and sick leave provisions.

For more information

Information on ratification and implementation of Convention No. 94 is available at: <http://www.ilo.org/ilolex/>

All requests regarding the application of the Convention should be addressed to the International Labour Standards Department of the International Labour Office at: NORMES@ilo.org or INFONORM@ilo.org

Assistance may also be requested from the standards specialists in one of the ILO field offices. A full list of field offices is available at:

http://www.ilo.org/global/Departments___Offices/lang--en/index.htm

