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## **1961 EUROPEAN SOCIAL CHARTER**

6th National Report on the implementation  
of the European Social Charter  
submitted by

### **THE GOVERNMENT OF CURAÇAO (Caribbean part of the Kingdom of the Netherlands)**

- Article 5 and 6) for the period 01/01/2013 - 31/12/2016)
- Complementary information on Article 1§1, 1§2, 1§3, 1§4 and Article 1 of the 1988 Additional Protocol (Conclusions 2016)

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## REPORT ON THE EUROPEAN SOCIAL CHARTER

**Article 5** (Freedom of Organization)

**Article 6** (Collective Bargaining) on  
the European Social Charter

**Answers** to the Negative Conclusions on **Article 1** (Right on Labour)  
Answers to the Negative Conclusions on **Article 1** of the **Protocol** on Equal  
Treatment in matters of employment and occupations without discrimination on  
the grounds of sex

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Labor and Welfare of Curaçao

CURAÇAO  
Kingdom of the Netherlands

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## INTRODUCTION

This document is divided in two sections. In the first section the economic development is shortly elaborated. Here, after information is granted on the gradual implementation of the articles 5 and 6 of the European Social Charter in Curaçao.

In the second section of this document, the so called Negative Conclusions ('non-conformities) on the articles 1 of the European Social Charter (right on work) and 1 of the Protocol on the European Social Charter (equal treatment) is properly addressed.

In both sections is clearly brought forward that our limited human and financial resources still continues to form unnecessary challenges in achieving full adherence to the European norms and standards laid down in the European Social Charter.

## THE ECONOMIC DEVELOPMENTS IN CURAÇAO

Preliminary data suggest that economic growth in Curaçao remained flat in 2016 (0.0%), following an increase of 0.3% in 2015. Meanwhile, real GDP expanded by a mere 0.1% in Curaçao, a slowdown compared to the 0.4% growth registered in 2015. Curaçao recorded a deflation- a decline in the average prices- on the account of a fall in international oil prices.

The economic stagnation in Curaçao was caused by a growth in domestic demand offset by a drop in net foreign demand. Domestic demand grew because of higher private and public spending. Both consumption and investment contributed to the rise in private spending. Meanwhile, public demand was up as a result of an increase in investments, including the construction of the new hospital and the upgrading of the road infrastructure. Also, public consumption increased because of more disbursements on goods and services. The negative contribution of net foreign demand was caused by a decline in exports that surpassed the lower imports. A sectoral analysis shows that real value added increased in the construction, financial intermediation and utilities sectors, while restaurants & hotels, manufacturing, wholesale & retail trade, and transport, storage and communication sectors recorded a contraction.

On the fiscal front, Curaçao expect a surplus on their current budget in 2016. Nevertheless, issues that pose a risk to the sustainability of the public finances in the medium term remain and, hence, need to be addressed. In the case of Curaçao, the deficit of the old-age pension fund (AOV), which is being financed through budgetary transfers, requires the necessary policy actions by the government. In addition, Curaçao's debt-to-GDP ratio is currently above the benchmark of 40% that is considered prudent for a small open economy, while economic growth has remained a lackluster. Consequently, the Government will have to take measures that stimulate a higher growth path to ensure debt sustainability in the medium term.

In 2017, Curaçao will benefit, albeit modestly, from the projected higher global economic growth. The economy of Curaçao will expand by a projected 0.4% in 2017 driven by the

increases in private and public spending. By contrast, a decline in net foreign demand will dampen the economic expansion.<sup>1</sup>

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<sup>1</sup> Economic Developments in 2016 and Outlook in 2017

## FIRST SECTION

### Article 5 Right on organization

### Article 6 Right on collective bargaining

In this section four interconnected topics (under A – D) are presented in order to give insight on the progress made regarding to the articles 5 (right on organization) and 6 (collective bargaining) of the European Social Charter.

The summary of the topics is as follows:

- A. The Protocol, the Principles and Objectives of the Tripartite Platform Dialògo Nashonal 'Kòrsou ta Avansá. Their activities in the reporting year 2016 is brought under the subparagraphs A. I to A. VII;
- B. The chapter on the annulation of the reservation on the right to strike of public servants is finally concluded;
- C. The Bureau Labour Mediation;
- D. The Social Economic Council of Curaçao.

#### ***A.I PROTOCOL, PRINCIPLES AND OBJECTIVES***

On February 6<sup>th</sup>, 2014, the social partners in Curaçao signed a protocol laying down the framework of the tripartite Platform for National Dialogue "Kòrsou ta Avansá" (roughly translates to: Curaçao moves forward/progresses). The Council of Ministers, the boards of the two umbrella trade unions, Sentral di Sindikatonan di Kòrsou (SSK) and Central General di Trahadónan di Corsow (CGTC), the Chamber of Commerce and Industry and the Curaçao Trade and Industry Association (VBC) all participated in the platform.



The protocol acknowledges the need for tripartite consultation yet does not exclude other relevant parties in the consultations. As such, partners may propose to invite representatives of other social groups to participate depending on the specific topic(s) at hand.

The Platform is assisted by a Facilitator and Secretary who coordinate all meetings and activities. In accordance with mentioned protocol the Prime Minister chairs this consultation (or another Minister in his absence) while the Facilitator chairs the meetings thus allowing for the active participation of the Prime Minister.

In principle, the Platform adheres to the rules and norms for social dialogue and tripartite consultation adopted by the International Labour Organization (ILO) based on the principles of equality, equivalence, consensus and democratic participation. Partners interact while taking the following core values into account: mutual respect, honesty, solidarity, sincerity, commitment, perseverance, integrity, discipline, responsibility and interdependence.

The Platform for National Dialogue works in silence, with coordinated publication of achievements, on the premise of always working together while actively seeking consensus on various socio-economic issues relevant to Curaçao. The end in mind is to always serve and put the interest of Curaçao first. In doing so, the social partners have made the commitment, to the extent possible, to use existing knowledge and expertise from numerous reports and studies that have been drafted and conducted over the years and to maintain a data driven approach when discussing the issues at hand.

## ***A.II AGENDA***

In 2014 seven topics of interest were identified for discussion, being:

- 1) Adoption of industrial policies;
- 2) Labour mobility;
- 3) Modernization of labour and social laws and regulations;

- 4) Safety on the job, labour inspection and labour force awareness aimed at increasing the opportunities on the job market;
- 5) National Development Plan (long term);
- 6) Increase efficiency and effectiveness in Government to lower the cost of services rendered;
- 7) Safety & Security.

According to the protocol, partners can make proposals on topics they would like to discuss. Since July 2015 the Platform has made it a point to keep abreast of developments in the community and has done so by inviting experts, organizations, companies etc. to inform the social partners and share their findings. This has led to support and/or input from the partners for among others the Platform for Youth Development, the efforts of the Multi-Disciplinary Project Team (MDPT) regarding the oil refinery, Curaçao Fair Trade Authority, Curaçao Development Institute, Media Development Indicators, Labour laws, Corporate Governance specifically of Government Owned Enterprises, Government Foundations and other related entities as well as the National Development Plan (NDP).

### ***A.III STAKEHOLDERS INVOLVEMENT IN THE NATIONAL DEVELOPMENT PLAN***

The social partners all agree on the importance and necessity of the NDP. The timing could not be more opportune considering the many challenges Curaçao is facing. The social partners were very much involved in the process of drafting and finalizing the NDP and including the United Nations Sustainable Development Goals (SDG's) and subsequent indicators in the plan.

The social partners participated in a high-level retreat held in 2015 which was a welcome approach to create an open and inclusive atmosphere for dialogue. Following up on that dialogue the platform supported the efforts of the local UNDP-office by inviting the major Government Owned Enterprises (GOE's) (utilities, port authority, dry dock, postal services) and the Curaçao Airport Partners (private operator) as well as the MDPT to give presentations on their plans and policies for the short-, mid- and long-term. These presentations served as valuable input to help finalize the NDP.



The Platform itself also contributed with its own remarks, comments and suggestions on the content and focus of the plan. Platform members also attended a workshop from the Ministry of Education on the implementation of TVET and STEM curriculum. A special session was held for the social partners to give their input on the implementation structure of the NDP.

Additionally, once the NDP was finalized the Platform invited the respective Ministers to present their areas of attention and explain the vision and action plans of their Ministries. Due to political developments, in the end only the Minister of Education and the Minister of Economic Development (partially) were able to present their plans. Nevertheless, the information and interaction were valuable for all partners.

The platform has decided to act as a sounding board for the various bodies within the implementation structure of the NDP. Both the private sector and labour organizations represented within the platform have expressed their commitment to keep supporting the NDP implementation and to provide resources of time, knowledge and expertise when necessary.

The platform believes that maintaining course based on the pillars, areas of attention and actions identified in the NDP is crucial and will benefit the country.

The key is to work together not only locally but also within the Kingdom, the region and beyond, making informed decisions, planning and acting to be prepared and anticipate on the many developments and challenges ahead.

#### ***A.IV COMMITTEES- 2016***

The subject matters of labour and Economic Development, and especially the role and future of the GOE's in the economic development and job creation on the island, are of great concern to the Platform.

In 2015, and with the intent of analyzing certain aspects more in depth, the Platform decided to install two committees: labour Laws & GOE's. Both committees had tripartite representation consisting of members and experts from within and outside the Platform. The number of members was limited to a maximum of two per social partner.

The committees were given the general mandate to analyze the subject matters at hand, identifying issues and seeking consensus on possible solutions. Unfortunately, in 2016 both committees stopped meeting due to a variety of reasons varying from lack of availability of members to lack of consensus on how to proceed on certain topics. In the end, the purpose and mandate of the committees was not fulfilled.

#### ***A.V MEETINGS 2016***

On average the Platform meetings are twice a month, with the flexibility of convening additional meetings when necessary. Taking national holidays and changes in scheduling into account, about 20 meetings were held in 2016.

## ***A.VI 2016 – AN EVENTFUL YEAR***

The year 2016 was an important year for social dialogue in which the Platform gained more recognition and acceptance in the community. The year opened with a Cabinet reshuffle resulting in the appointment of a new Prime Minister that also marked the beginning of new dynamics within the Platform. Even though the new Cabinet reconfirmed its commitment to the tripartite dialogue in writing, oftentimes only the unions and private sector organizations were present at the meetings.

As the Government cycle was coming to an end, new elections were scheduled at the end of September. Due to Mother Nature, with the island under a hurricane watch, those elections were held on October 5<sup>th</sup>. On September 14<sup>th</sup>, a few weeks before the election, a labour dispute between refinery contractors and their employees that had been brewing for weeks turned into a general national strike of unionized workers. Members of the unions represented in the Platform as well as from other non-affiliated unions joined the strike of the contractor workers when it became clear that Parliament had approved legislation that would significantly affect the position of employees at Government Owned Enterprises, Foundations and Related Entities.

This strike, the first of its nature in well over two decades in Curaçao, paralyzed most of the island that day. During the general strike on September 14<sup>th</sup>, 2016 the Platform played a crucial role in bringing parties together and putting an end to the strike. The Platform then took the lead in the subsequent 10-week consultations and negotiations with the Minister of Finance to solve one of the issues that triggered the strike. The importance and strength of organized tripartite social dialogue was once again underlined.

The new members of Parliament were sworn in by November and as the Cabinet formation rounds were underway the Platform was formally requested to give its input on matters of interest and attention to be included in the new administration's program.



The year ended on a challenging note when the sitting Minister of Social Development, labour and Welfare, without prior consultation with the social partners, announced an increase of the minimum wage going into effect as of January 1<sup>st</sup>, 2017. This had a serious impact on the relationships within the Platform, where it has been clearly stated that there is no discord on (the necessity of) the increase of the minimum wage but there is grave concern about the decision-making process. After all, neither the social partners in the tripartite Platform nor the other formal advisory bodies of the Government were informed or consulted. As per the end of 2016 the Curaçao Trade and Industry Association (VBC) sued the Government on this matter and were awaiting the Court's decision.<sup>2</sup>

#### ***A.VII CONCLUDING NOTES***

Notwithstanding the dynamic political climate and the impactful events of 2016, the Platform has kept working and persevered to give substance to much needed dialogue and consultation among the social partners. The social partners acknowledge that it is only by working together and seeking resolution for the many challenges the country faces that Curaçao will move forward to the benefit of all its citizens.<sup>3</sup>

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<sup>2</sup> PB 2016 no 46, hourly minimum wage Nafl 9.00 (approximately 5.80 US\$), 17<sup>th</sup> of August 2016 and in the Amigoe of 11<sup>th</sup> of August 2017 the Social Economic Council is granted the authority to advise the Parliament (new) beside its already existed authority to advise the Government;

<sup>3</sup> Information delivered by Aissa Henriquez, secretariat of the Tripartite Platform Dialògo Nashonal Kòrsou Avansá, July 2017

## ***B. ANNULATION OF THE RESERVATION ON THE RIGHT TO STRIKE PUBLIC SERVANTS***

Although public servants have always fully enjoyed the right to strike, the legal restrictions imposed on this right have been left in place for too long when assessed by reference to Article 8 (1) (d) of the UN Covenant on the Economic Social and Cultural Rights (1966) and the article 6 (4) of the European Social Charter.

Amendments were made in the Civil Code, the Criminal Code and the Substantive Public Service Law and Ordinance (P.B. 2010, no 87) and eventually the Government is glad to announce that both Acts on the annulation of the legal limitation on the right to strike in the public sector were deposited on the 6<sup>th</sup> of July 2017.

Contrary to the legal restrictions, in practice the right to strike of the public servants is exercised occasionally and with success as the paragraph narrated in the subparagraph A. VI on page 10 of this document.

## ***C. BUREAU LABOUR MEDIATION***

Besides the general strike between the unions organization SGTK – the employer's organization AAV, mentioned already in several paragraphs (A.VI and B) of this document where the Bureau had to intervened and had mediated during 17 sessions<sup>4</sup>, another 56 cases of negotiation 'new' or updated collective labour agreements were registered by the Bureau Labour Mediation in 2016. This way the Bureau contributed largely to safeguard the right to collective bargaining, as set by the Charter.

## ***D. SOCIAL ECONOMIC COUNCIL***

This tripartite council, predecessor of the Tripartite Platform mentioned under paragraph A I – A VII, consisting of representatives of the unions, employers and independent members, celebrated, last year, its 50<sup>th</sup> anniversary (P.B. 1966, no 25).

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<sup>4</sup> AAV stands for Antilliaanse Aannemersvereniging (Construction)



The Council has always had the statutory authority to advise the Government on a requested or unsolicited (own initiative), but never felt the urge to advise but upon request, until this year.

This year the Council made use of its authority to advise the Government unsolicited. In this advice on the minimum wage raise, the Government is urgently requested to take the possible macro-economic aspects linked to the indexation of the minimum wage adjustment seriously into consideration.

Secondly, the Council pointed out that the government, without taking the statutory advice of the Council, adjusted the hourly minimum wage from 8.20 Antillean guilders in 2016 to 9.00 guilders as for January 2017 and increased it further over the next four years to 11.41 guilders in 2020.<sup>5,6</sup>

Another achievement worth mentioning is that the Council extended its statutory advice authority to the Parliament as well (2).

Moreover the Council is determined to take the lead in regional context, too. So, during the Conference of the AICESIS recently held in the Dominican Republic the Social Economic Council of Curacao was unanimously elected by the Latin American and the Caribbean members to formulate the agenda, coordinate communication policies ('best practices'). So the coming two years the Council of Curaçao will, beforehand, formulate the agenda and coordinate, communicate policies ('best practices') and activities of the Association.

In conclusion, tripartism, collective bargaining and worker's right are fully anchored in our legal and practical system of participatory governance are fully reflected by the performance of both the Tripartite Platform Dialògo Nashonal 'Kòrsou ta Avansá' (2013) and the Social Economic

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<sup>5</sup> Curacao Cronicle, 8 september 2017;

<sup>6</sup> The legal minimum hourly wage was currently 8,20 Antillean guilders. In August 2016, two months before the election, the the now former Minister of Social Development Labour and Welfare decided this to increase it over the next four years to 11.41 guilders in 2020. The Minister was later criticized because this decision was made without the statutory advice of the Social Economic Council (SER);



Council (1966). These institutions showed the necessary willingness and firmness to make the Government accountable for issues regarding adherence to fundamental worker's rights.<sup>7,8</sup>

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<sup>7</sup> AICESIS: International Association of Social Economic Council and Similar Institutions, founded in 1999, 72 members, including Curaçao;  
<sup>8</sup> Curaçao Cronicle, 7 september 2017;

## SECOND SECTION

In this second part of the report the 'non-conformities' on the articles 1 of the European Charter (under A) and the non-conformities on the article 1 of the Protocol on the European Charter (under B) are addressed:

A.

### *Article 1 – Right to work*

#### *Paragraph 1 – Policy of full employment*

##### **Employment situation**

##### **QUESTION Committee:**

The Committee notes that the provided data are insufficient to evaluate the employment situation and request more information about the employment policies

##### **ANSWER:**

##### **General**

The Central Bank of Curaçao and Sint Maarten (CBCS) and the Central Bureau for Statistics (CBS) reported a descent in the youth unemployment rate from 37.2% (2013) to 29.7% (2015). The Government (re)introduced an effective legal tool as is the so called 'Lei di Bion' (P.B. 1989, no. 74, Landsverordening ter bevordering van de werkgelegenheid van jeugdige werkzoekenden). The intention of this Ordinance is to stimulate the employers to offer juvenile jobseekers a job for the period of one year while the Government stays accountable for the deliverance of the social premiums and taxes to the Social Security Bank of Curaçao.

Unfortunately, this tool did not achieve the desired results in decreasing the unemployment rate as fast as the Government had wished for.

So in response to this, the Government started an ambitious program called the '1000 youngsters at work'-project ('Mil Hoben na Trabou'), within a four-year period several

subprojects had to be launched to equip these juveniles with work ethics and competencies. In Annex A, an extended review this huge project.

More over, the Government set up a Vacancy Bank in 2013, which benefitted all categories of jobseekers. In 2013 only 100 unemployed persons inscribed at the Vacancy Bank, yet in 2016 this amount increased to 350 jobseekers which where incorporated on the labour market.

Last but not least, the Government signed Protocols in the Drydock and the Refinery sectors, emphasizing the inclusion of female in this technical mainly by male dominated sectors.

The Government has set up a job vacancy database in 2013 (100) and up till 2016 (extra 250) a total of 350 jobseekers benefitted from this initiative and are now incorporated in the labour process because they found suitable and decent work.

Due to this small success, registration in the job vacancy database reached 1300 persons. So the Government is also taking steps to promote the right to work by enhancing the effectiveness of programs/projects through major stakeholders, for example by agreeing protocols with major companies on the island such as the ISLA Refinery and the DryDock Curaçao.

## ***Article 1 -Right to work***

### ***Paragraph 2 – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)***

Prohibition of discrimination in employment

QUESTION Committee:

The Committee notes that few participants in the so called 'Tayer Sta Martha' obtained a job in the private sector.

The 2014 report entitled 'Disability policy concerns everyone' states that a large portion of both mentally and physically disabled people face physical and social obstacles in their daily lives.

However the Government is striving to break the social exclusion of disabled persons. So more and more disabled persons are encouraged to get themselves organized, with financial



subsidies, in organization such as 'Handicap Foundation Rights', 'Fundashon Kontakto', SOLARIS and 'Fundashon Pro Bista' (for the visually handicapped).

In April 2016 the Government, employer's organization (41 companies) and these above mentioned organization held a two day seminar to dialogue and exchange difficulties encountered by all stakeholders to achieve the incorporation in the labour market.

An Indication Commission, consisting of all stakeholders, was put in place to define criteria and percentages (quota) to facilitate the access of this vulnerable group in the labour market. This process is still ongoing.

Another project, worth mentioning, is the project 'Day on the Job, Yes I can!'.

Mentally disabled persons get the opportunity to work for one day at one of the offices of already mentioned participating 41 companies. These companies represent several branches in the labour market: banks, utility company, Government administration, the hotel and restaurant sector etc.

#### CONVENTION on the RIGHTS of PERSONS WITH DISABILITIES

The Government is considering extending the application of the UN Convention on the Rights of Persons with disabilities (CRPD) and all ministries accordingly started the process of drafting policy and legislation to implement the Convention.

This group remains a matter of constant concern to the government.

#### **1. Prohibition of forced work**

##### **QUESTION the Committee:**

Is forced labour prohibited by law and how was this enforced in practice?

**ANSWER:**

Although the ban on forced labour has never been laid down specifically in one article in our Criminal Code, forced labour offenders have always been prosecuted. Employers who fail to abide to the following three labour laws will be prosecuted and sentenced.

The following labour laws contain all necessary elements to successfully prosecute forced labour as a crime:

- a. The Ordinance on Minimum Wage (P.B 1972 no 110 and P.B. 2016 no 46);
- b. The Holiday Ordinance (P.B. 1949 no 17 with a minimum of 15 paid leave days on a yearly basis);
- c. The Labour Ordinance (P.B. 2000 no 67 and 68).

Law enforcement includes sanctions of 4 years imprisonment or 100.000 Antillean guilders (more than 55.00 US dollars) for criminal offence.

The sanctions for transgressions are somehow 'softer' consisting of an imprisonment sentence of 1 year or a penalty of 25.000 Antillean guilders (more than 15.000 dollars).

The Government doubled its efforts to raise awareness and educate the public on the topic of forced labour, labour exploitation and human trafficking<sup>9</sup>. This month, September 2017 the Government launched the awareness campaign 'Trago girls', say 'No', where Venezuelan girls are obliged to offer men 'a trago' ( Spanish: a 'fake' alcoholic drink) in order to make illicitly more profits at the end of the night/work shift.

These trago's however result to be a cup of sweet Tip Top syrup diluted with water for 5 Antillean guilders. The price of 5 guilders is the equivalent price of a whole bottle of this syrup. The female worker gets four guilders in the form of a chip to be collected at the end of the work shift.

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<sup>9</sup> Human Trafficking was laid down in new Criminal Code of Curaçao adopted in November 2011 and which prescribed a range from 9 to 24 years of imprisonment for preparators to this crime. Victims are referred for care and they are not detained or deported. During 2015 Curaçao DryDock settled out of court three Cuban plaintiff, who sued the company Cuban Government nearly a decade previously for physical and psychological abuse arising from a slave labour arrangement between the two parties

The Labour inspectors are very vigilant of these night club to prevent becoming places where the trago-girls can be forced to become sex workers against their will and increase income for the night club owners.

## **Work of prisoners**

### **QUESTION the Committee:**

Information on work of prisoners, it reiterates its request on the arrangements governing work of prisoners, which should apply the principle of non-discrimination enshrined in the Charter concern paying hours and other working conditions, as on social protection (employment injury, unemployment, health care and old age pensions).

### **ANSWER:**

In the only detention centre Curaçao has, named the 'Sentro di Detenshon i Korekshon Kòrsou', all prisoners are allowed to work in the prison library, prison kitchen etc. They are paid a salary according to the Ordinance of Minimum wage (P.B. 1972 no 110 and P.B. 2016 no 46) and good working conditions are under strict vigilance. The salary paid to the prisoner is often used to buy products such as tobacco and soft drinks. In the recent past, prisoners were able to save a part of their earned salaries, amounts almost at a sum of 1000,-- Antillean guilders (600 US dollars).

Moreover prisoners, are provided good medical care (yearly dental and sightcare included) where as for prisoners suffering from mental health issues are treated in the Section called the 'FoBa' (Forensische Observatie en Begeleiding Afdeling)<sup>10</sup>, this a special section in the Detention Centre.

Finally, the old age pension provision is connected to residency, so the prisoner maintains his/her right to the old age pension sum when he/she reaches the age of 65 years (age on

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<sup>10</sup> Translation: Forensic Observation and Guidance Department (FoBA): Forensysische Observatie en Begeleiding Afdeling (Dutch)



which elder persons are entitled to the provision, P.B. 1960, no 131 and P.B. 1960 no 83, the Ordinance on General Old Age Pension.

### **Domestic work**

#### **QUESTION the Committee:**

Requests relevant information on whether the homes of private individuals who employ domestic staff may be inspected and if foreign domestic staffs have the right to change employer in the event of abuses or if they lose their residence rights when they leave their employer

#### **ANSWER:**

Labor inspector reportedly inspected work sites where vulnerable migrants work, including a specific screening for indication of labour abuse and trafficking.

All workers (local and migrant) are entitled to file, without any costs, complaints about labour rights violations (breaches of law) by the Ministry of Social Development Labour and Welfare.

If these offences are labeled as transgressions or in the case of trafficking, serious crime offences the Labour Inspections, together with the police force is authorized to invade private houses where the alleged violation of labour rights, exploitation of trafficking is taking place.

As the (work) permit of the migrant (domestic) worker, is closely related to residency (P.B. 1966, no 17 and P.B. 2002, no 82), in cases of termination of an existing work relation between the employer and the worker, the employer is legally binded to inform the Immigration Service and the Ministry of Social Development Labour and Work, within a period of 6 weeks before the intended end of the work relation.

Obviously, during this transition period the migrant worker is free to stay on the island in search of another employer. However, in the process of the issuance a 'new' (second) work permit the migrant worker has to await in his/her country of origin.

### **3. Other aspects of the right to earn one's living in an occupation freely entered upon**

#### **Requirement to accept the offer of a job or training**

##### **QUESTION the Committee:**

What are the remedies available for the persons to dispute decisions to suspend or withdraw unemployment benefit?

##### **ANSWER:**

The unemployment benefit is supplied by the Ministry of Social Development and consists not only of financial but also social assistance. According to the law 'Maatschappelijke Zorg Curaçao' (Social Assistance Law, A.B. 2010 no 87) the unemployment benefit consists of the following components:

1. Welfare benefits ('onderstand');
2. Free health care assistance;
3. Subsidies for rent, in close cooperation with Fundashon Kas Popular
4. Subsidies for utilities (water and electricity)
5. Annual school uniform allowance;
6. Exemption from garbage collection tax;
7. Warm meal supply for disadvantaged children;
8. Paid costs of funeral up to 2000 Antillean guilders (1000 US\$).<sup>11</sup>

A system of free judicial assistance is yet, for some decades already, been put in place so the welfare client is enabled to appeal the withdrawal or suspension of his/her unemployment benefit. The free judicial assistance is provided by the Government with public funds.

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<sup>11</sup> Page 4 of the Year Report of the Ministry of Social Development Labour and Welfare, 2016

Lawyers or attorneys, can inscribe to this list of free judicial assistance, the so called 'piket list' at the Ministry of Justice to assist low income clients (income between 0 – 12.000 Antillean guilders per year) without any cost of the client. These lawyers listed to perform this service to community receive, per case, a compensation of approximately 1000.00 (thousand) Antillean guilders. This form of judicial practice is often called 'social advocacy'.

## **Privacy and work**

### **QUESTION the Committee:**

To provide information on measures taken by the Government to ensure that, when organising working hours, employers take due account of their employees' right to a private life and to ensure that any interference in their private life is forbidden and, where appropriate, penalised.

### **ANSWER:**

So far, the balance between work and private life is, although not officially regulated or laid down, derived from the 'spirit of law' laid down in the Ordinance of Labour in general (P.B. 2000 no 67 and 68)<sup>12</sup> and more specifically with the provisions regarding working and resting hours, overtime and compensation, Please see Annex B.

To enforce this balance between work and private complaints about labour regulation violations can be filed and is dealt with accordingly by mediation between the worker and the employer.

As for the UN Sustainable Goal, Curaçao specifically by Council of Minister's decision in 2016 opted to prioritize Goal no 8 about Decent Work and Economic Development and the intention is to undertake all necessary steps to ensure proper implementation and realization of this decent work related goal.

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<sup>12</sup> Annex A: P.B. 2000 no 67 and 68 explained regarding working hours and compensation for extra working hours



## ***Article 1 Right to work***

### ***Paragraph 3 – Free placement services***

#### **QUESTION the Committee**

Asks the legal basis for the operation of the public employment services in Curaçao

As the nature and type of services provided and if they are free of charge.

Also the Committee asks whether there exist private employment agencies, how these are licensed, operate and co-ordinate their work with the public employment service.

#### **ANSWER:**

By ordinance of December 4, 1989 (P.B. 1989, no 73) making temporary workers available to third party had been legally regulated. This Ordinance regulates the hiring out of temporary workers or the so called 'uitzendwezen'. More over, the Decree of October 1996 (P.B. 1996, no 139) stipulates further conditions for this activity.

Firstly, all employment agencies (private employment services) in Curaçao must have a permit. A permit must be requested at the Labour sector of the Ministry of Social Development Labour and Welfare. The hiring out of temporary workers without permit is punishable by law.

'Hiring out temporary workers' is considered when temporary workers are made available to a third party (= user enterprise or recipient) for a fee, to perform labour in the third party's enterprise other than by virtue of a working agreement between third party and temporary worker.

It is not keeping with good faith within the labour market, for non-temporary work to be performed by temporary workers. That is why temporary workers are only allowed to be put in for work of a temporary nature that is in case of;

1. Replacement of a temporarily absent employee;
2. Accidental increase of work;

3. Commencement of new work;
4. Urgent work that has to be performed immediately to prevent impending accidents, to organize rescue measures or to repair shortcomings of the material on a installation or to company buildings which can become dangerous to employees, etc<sup>13</sup>

So far however, the implementation arrangement of the issuance of permits by these agencies has not yet been put in place.

The Government is looking seriously into possibilities to start up the supervision of these employment agencies. Up till now, a transition period has been granted to the agencies and an intense information campagne has been launched.

Supervision on the temporary workers made available by these employment agencies is done by the Labour Inspectorate. The employment agency must pay the wages, and not the user enterprise. Regarding the relationship of authority this means that the employment agency has the formal authority over the temporary worker. However, in practice it is the user enterprise, which gives instructions and assignments to the temporary worker.

In principle all legal regulations, which are applicable to the working agreement as meant in article 1613a of the Civil Code, are also applicable to the working agreement between the employment agency and the temporary worker. In particular this concerns the Ordinance on Minimum Wages, the Labour Regulation 2000, the Vacation Regulation 1949 and the Severance Pay Ordinance.

#### **QUESTION the Committee:**

The Committee takes note of these data provided by the Vacancy Bank show only information for 2013 and 2014, but considers that they are not sufficient to establish that placement services operate in an efficient manner in Curaçao

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<sup>13</sup> [http://www.diraz.info/laborlegislation/folfer11\\_eng.htm](http://www.diraz.info/laborlegislation/folfer11_eng.htm)



**ANSWER:**

Private employment services are laid down in the Ordinance of 4 December 1989 (P.B. 1989, no 73) as already state above. As for the public employment service, it can be stated that the Vacancy Bank ubicated in the labour sector of the Ministry of Social Development Labour and Welfare is the sole and only 'public' instrument in the match between jobseeker and employer.

**QUESTION the Committee:**

The Committee wishes to receive information on the following:

- a. Number of jobseekers and unemployed persons registered with public employment services;
- b. Number of vacancies notified to these services;
- c. Number of persons placed via these services;
- d. Placement rate (i.e. percentage of placements compared to the number of notified vacancies)
- e. Average time taken by public employment services to fill a vacancy;
- f. Placements by these services as a percentage of total employment in the labourmarket;

Respective market shares public and private services.<sup>14</sup>

**ANSWER:**

| NO# | QUESTION  | ANSWER  |
|-----|---|---|
| 1.  | What are the number of job-seekers and unemployed persons registered with the Vacancy Bank; | Curaçao does not have a law that obliges all citizens who are searching for a job to register at the Center of Work of the Ministry of Social Development labour and Welfare. Registering is still voluntary up to this point. The Ministry under various Ministers has taken initiaves to stimulate local jobseekers to register for work. Between March and May of 2017 many initiatives were taken and based on these initiatives voluntarily about 5000 jobseekers registered voluntarily for work.. The largest percentage of these job-seekers were on a lower level (VSBO) and in the administrative sector. While vacancies were more for the petrochemical Sector. |

<sup>14</sup> Information supplied by the Sector Director of Labour, Ms D. Philbert-Nievelde MSc/CPC/BAP, september 2017



|    |  |  |
|----|--|--|
| 2. | What are number of vacancies   | <p>There is clearly a huge mismatch between the supply of jobseekers and the demand of companies in Curaçao. Curaçao does not have a law that obliges all Business Owners and other organizations who are searching for qualified workers to register at the Center of Work of the Ministry of Social Development labour and Welfare. Only when Business Owners want to recruit foreign workers are they obliged to register their vacancies. So there are many more vacancies in Curaçao than those registered by companies who are seeking foreign workers:</p> <p>In 2017 from January till October 2<sup>nd</sup> 2017 in the Center of Work of the Ministry: 3111 vacancies were registered. We are aware that there are more vacancies that we do not know about.</p> <p>In September 2017 under the current Minister Mr. ing. Hensley Koeiman a petition is registered to start the process to work on a law that obliges jobseekers but also companies and other entities seeking for qualified workers to register at the Center of Work.</p> |
| 3. | What were the number of vacancies  | <p>Companies who were seeking foreign workers and posted vacancies are as follows:</p> <p>In 2010: 5128<br/> In 2011: 5303<br/> In 2012: 5223<br/> In 2013: 5402<br/> In 2014: 3764<br/> In 2015: 4030<br/> In 2016: 3641<br/> In 2017 till October 2<sup>nd</sup> 2017: 3111</p> <p>Again there must have been more vacancies that were not registered at the Center of Work.</p>   |
| 4. | How many local people were placed in jobs by the Sector of Labor                                     | <p>About 300 between January till the 5<sup>th</sup> of October 2017. This entails all initiatives taken by the Sector of labour so activities of the Center of labour of practical work training and also the project 1000 hobben na trabou which also had a number of initiatives to place youth between 18-30 years of age at work.</p> <p>Curaçao is going through some serious economic issues in which droves of local people are losing their stable well paid highly productive jobs and which are not replaced by other productive jobs but by low skilled low productive service jobs. Also many previous stable companies have been retiring many workers such as InselAir and many other contractors</p>   |
| 5. | What is the placement rate ( percentage of placements compared to the number of notified vacancies); | <p>The placement rate is nihil.</p> <p>The reason is that there are a substantial number of companies that are closing their doors due to an economic downturn.</p> <p>Those placed in new jobs lose these jobs again as a result of the economic stagnation.</p>  |
| 6. | What is the average time taken to fill a vacancy   | <p>The average in Curaçao in the private sector is currently 4 months</p>  |

|    |  |   |
|----|--|---|
|    |  | The average in Curaçao in the Government is between 8 months and 2 years which is totally unacceptable. |
| 7. | What are the placements as a percentage of total employment in the labour market | The placements are nihil at the moment due to the fact that there are no new job openings.              |
| 8. | What are the respective market shares of public and private services             | This question cannot be answered at this point  |

## ***Article 1 – Right to work***

### ***Paragraph 4 – Vocational guidance, training and rehabilitation***

#### **Introduction**

FEFFIK was established in response to the need of the Government, trade unions and business association to retrain mine workers who were massively laid off. As a result, the foundation for vocational education and training was founded on January 18<sup>th</sup>, 1980 by the Government, the trade unions and the employers' organization.

FEFFIK has the following goals: to promote training on the job; to promote training and retraining; to promote apprenticeship program and to promote vocational training in the widest sense of the word<sup>15</sup>.

#### **Answers to the questions**

##### **QUESTION the Committee:**

The committee asks whether nationals of the other States parties have equal access to vocational guidance, training or rehabilitation.

##### **ANSWER:**

All nationals of other States parties have equal access to vocational training. There are several requirements that prospective students are required to meet in order to be eligible

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<sup>15</sup> Information provided by FEFFIK, the vocational training institute, oktober 2017, by Ms S. Cork



for admission to FEFFIK, such as the following: meet minimum age requirements of 16 years, hold a valid Dutch ID card or submit original immigration documents in order to prove residence status, hold a high school diploma or must be a 2<sup>nd</sup> year high school dropout. Applicants must submit copies of their diploma and high school transcripts as evidence of their attendance. Applicants must also undergo an interview process where the school's representative looks for the motivations for pursuing the course and commitment to completing the field of study. All applicants must undergo a drug test (for marihuana and cocaine).

Language of instruction is Papiamentu and the books are in Dutch. Nationals of other States parties must be proficient in both languages. If the prospective student has limited proficiency in both languages, he/she is encouraged to become proficient first and return to FEFFIK at later a date. Finally, tuition for all students (whether he/she is a local or a national of the other States parties) must pay a school fee of 650.00 Antillean guilders a year.

**QUESTION the Committee:**

The Committee requests further whether the vocational guidance is free of charge.

**ANSWER:**

No. In order to attend FEFFIK, all students (both locals and nationals of the other States parties) must pay a school fee of 650.00 Antillean guilders a year.

**QUESTION the Committee:**

The Committee asks if the vocational guidance is provided in the education system and in the labour market.

**ANSWER:**

Yes. FEFFIK has one educational guidance counselor (who is concerned with educational problems, choices and adjustments), four social workers (who provide support for students suffering from a range of difficulties – they can help those displaying difficult behavior, those



affected by teen pregnancy and those affected by difficult home environments for example) and two internship supervisors (who visits the intern at the workplace to discuss his/her progress and any difficulties they may be facing).

**QUESTION the Committee:**

What is the funding? Staffing? And number of beneficiaries?

**ANSWER:**

The only funding involved is that FEFFIK has paid for accident insurance for all of its 400 students both at school as in the workplace for the amount of 2600.00 Antillean guilders a year.

**QUESTION the Committee:**

The Committee wishes to be informed whether the right to vocational guidance is guaranteed.

**ANSWER:**

Yes. Vocational training is currently considered to be a right workers have and is guaranteed. At the same time it is an economic instrument that is part of employment policies and of the productivity and competitiveness strategies of companies. All this, combined with the fact that the role of education, training and lifelong learning is essential, makes it evident that nowadays it is impossible to aim at decent work without vocational training.

FEFFIK offers day classes for students between the ages of 16 through 24 and evening classes for those 24 years and older.

**QUESTION the Committee:**

The Committee is anxious to be informed whether continual vocational training is settled within a regulatory framework or strategy related to continuing vocational education, adult education and lifelong learning.

**ANSWER:**

No. There is currently no regulatory framework or strategy in place.

**QUESTION the Committee:**

The Committee is further very interested whether in the event that companies organize the training courses if the costs were covered by the company or the workers themselves.

Many large companies on the island understand the importance of providing training for their workers and pay all expenses related to the activity. On the other hand, workers who pay for their vocational training are planning to leave their current job at the end of their training session.

**QUESTION the COMMITTEE**

**ANSWER:** please see ANSWER about vocational training.

**QUESTION the Committee:**

The Committee asks to please provide information on any initiative implemented in the area of vocational training for persons with disabilities, including the number of participants to such initiatives. Also to provide specific information on education and guidance accessible to persons with disabilities.

**ANSWER:**

FEFFIK has never provided vocational training for persons with disabilities. However, FEFFIK is aware that ILO for decades has promoted the equal treatment and equal opportunities of people with disabilities, including in skills development and employability programs. FEFFIK will, in the near future, discuss this matter and seek advice on this matter on how best to attend this subject matter.

**ARTICLE 1 of the 1998 Additional Protocol- Right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

**A.EQUAL RIGHTS<sup>16</sup>**

**QUESTION the Committee:**

How is the right to equal treatment in employment without discrimination on grounds of sex adequately guaranteed in law and in practice?

**ANSWER(s):**

At the time of this report the prosecutor's office had not tried or had any cases pending regarding gender discrimination.

The Government of Curaçao (also part of the former Netherlands Antilles) made necessary policy and legislative changes to guarantee equal treatment and equal opportunities in employment for women.

In 1983, for instance, a law was introduced that allowed all married women working for the Government on part-time or full time basis to finally get permanent employment as Government workers. In 1994 the law was introduced that eliminated the pay gap of 25 percent between married women and men (and unmarried women) working for the government.

No recent studies have been undertaken looking at the pay gap between men and women, especially in the private sector. What we do know is that women are still overrepresented in

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<sup>16</sup> Information provided by Ms Jacqueline Martis MsA, gender specialist, in the Ministry of Social Development Labour and Welfare



the service and care industry and sectors and that these are sectors are still (seemingly) valued less than technical and trade sectors that are still overwhelmingly male dominated.

At the moment the Central Bureau is working on a publication (2017) which will analyze statistical data available through a gendered lens will provide us with necessary data on women for Curaçao

## **B. EQUAL OPPORTUNITIES**

### **QUESTIONS the Committee:**

Please provide statistics on the male and female employment and unemployment rates and pay differentials between women and men

### **ANSWER17:**

According to official data from the Central Bureau for Statistics for Curaçao, in comparison with September 2016 (13.3%), the unemployment rate remained almost the same in the first half of 2017, at 13.2% of the active population. Compared with September 2016, youth unemployment (15-24 years) fell from 36.8% to 32.5% in the first half of 2017.

From April 2016, the unemployment rate rose from 11.3% to 13.2%.

If we compare unemployment with April 2016, it has increased from 26.2% to 32.5% in the 15-24 age groups. We can also see an increase in the unemployment rate for men. Unemployment among men rose from 9.9% to 11.3%. Even with this increase the rate of unemployment for women remains higher than for men. Between September 2016 (14.6%) and April 2017 (14.9%) unemployment among women has hardly changed, but there is an increase if you compare it with 2016 which was 12.6%.

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17 Information provided by Ms Jacqueline Martis MsA, gender specialist, Ministry of Social Development Labour and Welfare

**Please provide the positive measures to promote equal opportunities between men and women taken in Curaçao since the constitutional reforms of October 2010**

**ANSWER18:**

In general all efforts directed at employment, reducing poverty and economic growth target both men and women, taking into account the differentiated needs of men and women.

To increase and strengthen the effectiveness of policies and strategies the Government set up a job vacancy database on 6 September 2013 to provide various services for unemployed women and men. The crucial functions of the database are to promote the financial independence of women, especially mothers with small children, and facilitate access to the labour market for women. Together with major employers on Curaçao, the Government has also founded the National Coalition for Quality Employment to organize long-term projects with on-the-job training.

The Maternity Leave Act is an example of legislation to improve work arrangements for women. The maternity leave was extended from 12 to 14 weeks in 2011, and additional measures such as creation of opportunity and space for women to breast feed or pump their breasts was also taken up in the new law. Several companies have since created lactation rooms on their work premises for women.

The rules of the working hours scheme apply to both men and women. Some businesses have even adopted their own internal policy of enabling men to take paternity leave.

Curaçao has many women in prominent positions. At present, the governor is a woman and 6. Members of the 21 member parliament are women.

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18 Ms Jacqueline Martis MsA, gender specialist, Ministry of Social Development Labour and Welfare



Furthermore, the Ministry of Social Development, labour and Welfare and the Ministry of Economic Development have several projects running that train unemployed men and women, focusing on increasing necessary skills and knowledge needed for employment and starting up their own businesses.

One such training was especially directed at women developing technological skill was carried out by the Ministry of Social Development, labour and Welfare<sup>19</sup>.

Curaçao simply does not have the right resources to train clients on an MBO, HBO level in S.T.E.M.

This needs to be done in a regular accredited Occupational Training Center.

In this changing world of work at the World Economic Forum and in almost all ILO conferences it is indicated that countries have to prepare our youth and women for the areas of growth in Science Technology Engineering and Math (S.T.E.M) because these areas of training will secure decent work opportunities and growth.

The Education system in Curaçao right now though is simply not responding to these calls for action.

Public Schools and Private Schools up to now keep offering obsolete education curiculy which prepare studens of a variety of levels such as VSBO, SBO even HBO and University level with skills to occupy jobs which will be obsolete pretty soon. So we are right now still preparing the students for jobs which will be taken over by ICT. While the rest of the world has already entered the 4th Industrial revolution in which computers, robots, artificial intelligence etc. will take over a great variety of repetitive jobs and tasks which are common for administrative jobs and these jobs will disappear or be far less so there will be far less vacancies in these fields.

Studies which prepare students and citizens in **creative thinking** and **collaborative jobs resolving problems** such as global warming, climate change and health problems ets, will prepare them for new creative jobs that computers cannot do. But we are not preparing students in Curaçao for this way of training and working on a large scale yet, so we have allot of work ahead of us to convince the education system in Curaçao.

In an attempt of the Sector of Labor to do something in this area we organized a Virtual Assistant entry level training but it was more a course to train women with children to use the administrative skills they already have acquired on a mbo and hbo level to market themselves better to work for local companies from their home, giving them more flexibility as moms in

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<sup>19</sup> Ms Donate Philbert-Nievelde, sector director Labour of the Ministry of Social Development Labour and Welfare



their own micro administration business. We prepared to train 10 women. 5 already passed the course and are working for themselves and 5 are in training right now and will finish before the end of this year<sup>20</sup>.

The Sector of Labor is fully aware though that world wide there is a revolution taking place which will greatly impact the way we are working in the coming years. This ever changing world of work requires creative thinking people who can come up with solutions for the huge challenges, such as climate change, global warming etc, Curaçao is facing and the current way of training in Curaçao will not help to prepare our youth and women on a large scale.

The type of training our Island of Curaçao should offer will have to take place in a state of the art **occupational training center** (we still have to built and operate) and we should offer training in **Science, Technology Engineering and Math** related positions, competencies and skills such as programming skills, coding skills etc. and this could be a fenominal start. Unfortunately our Island is not offering this right now and we are actually falling behind in comparison to other small islands in the Caribbean in which community occupational training centers are offering these programs such as Trinidad, Bahamas etc.

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<sup>20</sup> Ms Donate Philbert-Nieveld, sector director Labour, Ministry of Social Development Labour and Welfare

## ANNEX A

PROJECT '1000 JUVENILES AT WORK' consists of 10 subprojects:

### I. Multi Versatile Crew by Selikor (Waste processing company)

16 youngsters received training regarding waste handling and processing in a sustainable manner. These jobseekers obtained a contract on temporary basis and later entitled to a permanent contract. (Costs involved: 25.000,- Antillean guilders<sup>21</sup>);

### II. Building of the New Hospital in Otrobanda

25 unemployed and low educated youngsters in the ages between 18 to 35 years were included in the guided construction project of the new built. After finalizing this training succesfully these youngsters got a job at companies already affiliated with the building of the hospital; (Costs involved: 29.796,-. Antillean guilders);

### III. Windmill ('Molina di Bientu')

The start-up of this project, in close cooperation between the Ministeries of Public Health Environment and Nature and Social Development Labour and Welfare, formed a real boost. In this project 10 jobseeking youngsters with some technical skills were given training to fix windmills on the island. (Costs: 22.000,- Antillean guilders);

### IV. Elimination of breeding place

The project was initiated by the Ministry of Public Health Environment and Nature as a response to the epidemia of Chicungunya in 2016. A number of 60 persons on welfare were involved and obtained an one-year contract to eliminate existing breeding places of the mosquitos by a large scale cleaning of the areas (involved). This multi sectoral initiative and close cooperation between the ministeries of Public Health Environment and Nature, the waste processing company SELIKOR, the Ministry of Social Development Labour and Welfare amounted a sum of 98.400,- Antillean guilders;

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<sup>21</sup> 1 US dollar is NaF 1,82

#### V. Fort Beekenburg (Fortress Beekenburg)

This project trained youngsters in the maintenance of the construction of historical monuments on the island. These young professionals received guidance in social formation, vocational training and on-sight coaching and last but not least the Marines of Curaçao offered the necessary follow-up. Costs involved 100.000,- Antillean guilders;

#### VI. Saab Interieurdesign: 'Mi Fishi' (My Profession)

The youngsters were trained through on the-(work floor)-job-training, social formation and vocational training to master the skills of an interior designer. Costs: 450.000, - Antillean guilders;

#### VII. KWI Solutions: Welder

A group of 10 youngsters is being trained in the course of arc welding with coated electrode techniques. These youngsters will also pass through a counseling that includes social formation, specialized/subject –oriented training. Costs: 135.880, - Antillean guilders;

#### VIII. ETICA: Labour Ethics

Special attention was given to a group of 15 clients, who had experienced difficulties in maintaining their obtained jobs. The course included trainings to adapt and internalize the correct work attitude and competences. Costs: 45.000, - Antillean guilders;

#### IX. Kenniscentrum Beroepsonderwijs voor Bedrijfsleven (KBB):

Security/EVCPortfolio/Barometer/bricklayering/gardening

Three training methods/workshops were facilitated by a private vocational training organization, KBB where 25 persons obtained skills in the security branche, bricklayering and gardening. Costs: 245.000, - Antillean guilders;

#### X. Teeth Repair Mobil ('Bus di djente')



Bus di Djente is a project where citizens, free of charges, can undergo a regular check of their teeth and teeth gum in two mobile dentist practices. These busses travel to different areas on the island to get closer to their clients. As a result of these projects, 2 persons were enabled to execute certain dentist activities in conformity with the World Health Standards. Both jobseekers obtained work as assistant to the mouth hygienst practice. Costs: 4.800, - Antillean guilders;

Through this main project 'Mil Hoben na Trabou' and its ten subprojects resulted in 158 juvenile and adult jobseekers (re)entering the labour market.

## **ANNEX B:**

(Explanation on P.B 2000 no 67 and 68: Labour Ordinance)

### **I. Working hours and resting hours**

#### *Non-schedule Workers*

The resting hours for non-schedule workers are:

- The period between 20.00 o'clock at night and 7.00 o'clock in the morning
- Two time table free parts of the day (may be continuous, for example on a Saturday)
- Sundays
- Holidays

The regular working hours may not fall within the resting period. If one is obligated to work during this period, this is considered as overtime and has to be paid accordingly.

#### *Store personnel*

For store personnel the time of 20.00 o'clock may be later if the official hours of closing are later. The resting time begins half an hour after the official closing time.

#### *Schedule workers*

For schedule workers there is another regulation. The resting hours of a schedule worker are the following:

- Daily the period that lies before and after the working hours according to his timetable, taking into consideration that his resting period per 24 hours (continuously) has to be (continuously) a minimum of 11 hours. This resting period may be reduced once every seven week to a minimum of eight hours
- The weekly day off according to his time table (this has to be on a Sunday once every seven weeks)
- Once every week a part of a day prior to or after to 13.00 o'clock
- Five holidays per year

In case of holidays special rules applies.

Obligation to report Time tables for schedule workers have to be reported to the Ministry of Social Development Labour and Welfare. The director of the department has the power to forbid the time table in certain cases.

Article of law Article 9 Arbeidsregeling 2000 22

## **II. Pause**

The period during which the employee has to work has to be interrupted for at least half an hour after five hours of work, overtime included. An interruption of less than fifteen minutes doesn't count as a break. For employees in a full continue shift separate rules apply.

Working on It is forbidden to have the employee work on during the break other than by way of overtime.

"Stand by", If the employee has to stay available during the break to go to work if he's called upon, then this can be considered as consignment (see paragraph 4.9).

Article of law Article 10 Arbeidsregeling 2000

## **III. Overtime**

Overtime

There is overtime in the following situations:

- If the employee works during his period of rest
- If the employee works longer than the maximum period of labour per day or per week.

Mind you, in case of a part time contract of for example 20 hours per week, there is only overtime if the regular 40 hours per week is exceeded (or for schedule workers 45 hours per week). Only if parties make other arrangements other rules will apply.

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22 Arbeidsregeling 2000 is the Labour Ordinance 2000 (P.B. 2000 no 67 and 68)



If the employee is called upon when “standing by”, there is also overtime (see 5.9).

Period of labour, The maximum time of labour inclusive overtime for non-schedule workers is 11 hours per day and 50 hours per week, considering that the total period of labour inclusive overtime calculated over 13 weeks may not exceed 45 hours.

The maximum time of labour inclusive overtime for schedule workers is 11 hours per day and 55 hours per week, considering that the total period of labour inclusive overtime calculated over 13 weeks may not exceed 50 hours. Equal to non-schedule workers schedule workers may work 10 hours of overtime above their regular hours calculated over four weeks.

For nightshift there is a maximum period of labour inclusive overtime of 9 hours per day considering that this may not exceed 45 hours per week calculated over a period of 13 weeks

#### **IV.Compensation**

Overtime has to be compensated by a surplus above the salary of 50%.

The employee and employer may agree by writing that overtime is not to be paid in money but in time-back (1,5 hours per 1 hour overtime).

Partly overtime hours will always be rounded up to half hours. Overtime which doesn't exceed 15 minutes per day and which is not on a regular basis is not considered as overtime.

#### **Extra Compensation**

In certain cases above the normal overtime compensation an extra compensation should be paid. The total compensation will then exceed 150%.

#### **Overview**

The total compensation for non-schedule workers for every hour overtime is as follows:

#### **Situation Compensation**

(incl. salary)

exceeding the maximum period of labour

(per day or after 4 weeks) 150%

overtime on the day that the employee is free

according to his work schedule 175%

overtime on a rest day 200%

overtime on a holiday 250%

The total compensation for schedule workers for every hour overtime is as follows:

Situation Compensation

(incl. salary)

exceeding the maximum period of labour

(per day or after 4 weeks) 150%

overtime on the day that the employee is free

according to his work schedule 175%

overtime on a rest day 200%

overtime on a holiday 250%

overtime in combination with nightshift 175%

#### Conditions

If the employer calls upon the employee to work overtime during a day which the employee is free according to his work schedule, than a minimum of three hours overtime should be paid.

If the labour hours per day inclusive the overtime is a minimum of ten hours, the employer is obligated to give the employee a hot meal or a compensation to be used towards a hot meal.

An instruction to work overtime has to be given by the employer to the employee the soonest possible. When instructing the employee to work overtime the employer has to take the interests of the employee into consideration.

Overtime obligatory?

The Arbeidsregeling 2000 doesn't answer the question if the employee can refuse overtime if there is no obligation to work overtime. This question has to be answered through the labour laws. In general an instruction to work overtime may not be denied without a valid argument.

Article of law Articles 14 up to and including 17 Arbeidsregeling 2000

## **V. Nightshift**

Definition Nightshift is when a schedule worker works according to his schedule on or after 0.00 o'clock and before 6.00 o'clock, other than by way of overtime.

Duration of the Labour

The duration of the labour in a nightshift, the break not included, is a maximum of 8 hours (overtime included a maximum of 9 hours). Furthermore the duration of the labour for schedule workers who work on a nightshift is not 45 but 40 hours per week, calculated over a period of time of 13 weeks (when including overtime a maximum of 45 hours).

Work schedule The work schedule of an employee who works nightshift has to comply with the following conditions:

- the employee may only work a maximum of 14 times a nightshift in a period of 4 weeks (unless it concerns a specific night job for example night security or personnel of the hotel and casino industry);
- the employee should have a continuing resting period after a nightshift of:
  - a. a minimum of 12 hours if the nightshift ends before or at 2.00 o'clock
  - b. a minimum of 14 hours if the nightshift ends after 2.00 o'clock



- the period of rest mentioned above may be cut in a continued period of 7 days to 8 hours;
- the employee has a resting period of a minimum of 48 hours if he has worked continuously 6 times in a nightshift.

Article of law Articles 12 and 14 Arbeidsregeling 2000

## **VI. Standby shift**

### **Definition**

Under consignment is understood: a period of time between two continuous shifts or a break, during which the employee is obligated to stay in touch to get back to work in case of unforeseen circumstances.

In case of so called split-shifts or shifts that have been discontinued, for example when the employee has to work early in the morning and in the afternoon, there is no consignment if the employee doesn't have to stay in touch during the break.

Several prohibitions It is forbidden to force a consignment on employees younger than 18 years of age.

Per 4 weeks during a period of 14 continuous days no consignment may be forced to an employee.

Also no consignment may be forced in combination with a nightshift on the same day.

### **Duration of the Labour**

If the consignment also includes the period between 0.00 and 6.00 o'clock, than for the schedule workers is not applicable the normal working period of 45 hours, but the duration of labour calculated in a period of 13 weeks is not more than 40 hours a week. Other than this the duration of labour will stay the same.

The labour as a result from the consignment, doesn't count for the calculation of the normal period of labour (with or without overtime) as mentioned in paragraph 4.4 and 4.7

## Compensation

The labour time which has to be compensated during the consignment is the real time the employee has worked when called upon.

One call or several calls within half an hour are considered to last at least half an hour, if after the employee has worked during consignment and within half an hour he is called upon, the period which lies between has to be compensated as if during that period one has been working.

Labour conducted during standby has to be paid as overtime.

## Stand by Compensation

Unless agreed otherwise in writing, the employer decides which employee has to bare consignment notwithstanding if the employee is called upon or the employee has worked. The compensation is 1% of a month salary before deductions. This compensation may not be deducted from the compensation that has to be paid if the employee is called upon.

Article of law Article 11 Arbeidsregeling 2000

## **VII. Full continue shift**

### Definition

Under labour in a full continue company is understood: labour in a company which is continuously being run during 24 hours a day such as parts of the medical sector and the oil refinery.

### Special rules

For employees who work nightshift the following applies:

- the day of rest should be once in every 13 weeks on a Sunday
- if the work doesn't allow, the break can be taken later than after 5 hours of work
- there is no maximum period of labour inclusive overtime per day

- the period of labour inclusive overtime is a maximum of 60 hours per week. The time of labour without the overtime is 45 hours per week (in case of a nightshift also 45 hours per week)

For consignment shift (see paragraph 4.9) there is for schedule workers in a full continue shift a 14 day consignment free period, consignment shift in combination with nightshift is forbidden. The consignment compensation is not applicable.

Article of law Article 26 Arbeidsregeling 2000

### **VIII. Administrative obligations for the employer**

List of employees Every Company should hang a list of employees in a place where the employees have free access to. This list gives a systematic view of the various functions in the company and the amount of employees, and also the period of labour and work schedule in the company and the period of rest. The model of this list is equal to the list according to the Arbeidsregeling 1952.

#### **Obligation to Inform**

Lists which contains working schedule for schedule workers have to be submitted to the Ministry of Social Development Labour and Welfare. This also applies to structural changes in the lists.

#### **Incidental changes**

If an employee incidentally has to work longer or shorter than according to the work schedule, (in connection with the possibility to move working hours between days; see paragraph 4.4) than he has to be notified 48 hours in advance.

#### **Prohibition Director**

The sectordirector of Labour of the Ministry of Social Development Labour and Welfare can forbid a work schedule regarding an employee or a group of employees or can give binding instructions regarding this schedule if:



- He/she is of the opinion that there is no schedule work necessary in this company
- He/she is of the opinion that this is the case because of the health (risk) of the employee or employees.

#### Register of Personnel

The employer is obliged to hand over a register of personnel if asked by the Ministry of Social Development Labour and Welfare. The register of the personnel contains the names, dates of birth, and nationalities of the employees. Regarding employees who are not allowed by law in Curaçao, the number and the date of the permit should be mentioned.

#### Register of overtime

The employer should have a register of the overtime that is being worked in his company and is obligated to hand this over to the Ministry of Social Development Labour and Welfare. The register of overtime contains the names of the employees who has worked overtime, the date of the overtime and the duration of the overtime per employee.

Article of law Articles 28 till 30 Arbeidsregeling 2000

## ANNEX C

