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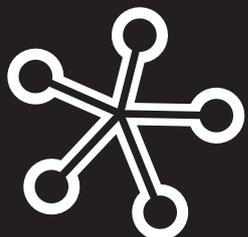
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**Amsterdam Institute for  
Advanced labour Studies**

# **National Labour Rights for Women**

*Janna Besamusca & Kea Tijdens*



**Working Paper 146**

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AIAS

University of Amsterdam

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# National Labour Rights for Women

Inventory of national labour legislation re-  
garding women's labour rights in Egypt,  
Guatemala, India, Indonesia, Kenya, Mo-  
zambique, Pakistan, Paraguay, Peru, South  
Africa, Tanzania and Uganda

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# 1 Introduction

From 2012 to 2016, the International Trade Union Confederation (ITUC), the WageIndicator Foundation and the Amsterdam Institute for Advanced Labour Studies (AIAS) are running the *Labour Rights for Women* project with national trade union confederations and WageIndicator teams in twelve developing countries in Africa, Latin America and Asia. Six African countries participate in the Labour Rights for Women project (Egypt, Kenya, Mozambique, South Africa, Tanzania and Uganda), three Asian countries (India, Indonesia and Pakistan) and three Latin American nations (Guatemala, Paraguay and Peru).

Labour Rights for Women is one of the female leadership (FLOW) projects of the Dutch Ministry of Foreign Affairs and aims to empower female workers by raising awareness of labour rights, empowering women to improve their own work situation and improve legislation. In this context, the Amsterdam Institute for Advanced Labour Studies (AIAS) of the University of Amsterdam in the Netherlands publishes three overview reports covering the ratification of relevant ILO conventions by the countries in the project, national legislation important to women workers and gaps in the legal setting of the respective countries. This is the second of those reports.

The report focuses on the legislation that exists in the twelve countries in the Labour Rights for Women Project. In order to retain its practical value, this report does not provide an exhaustive list of all relevant legislation and policy in the twelve countries, but an impression of the most important rights that women should be able to rely on. In chapter two, we start by a description of those different sections of labour law that are crucial for decent work around the world and then continue to provide brief reports for each country in chapter three. We hope this overview may provide an outline of the general framework of laws affecting working women

We do so in the firm belief, that in order to improve working conditions on the ground, one must start from awareness of those rights that already exist. While ample room for improvement exists (the most latent cases of which will be discussed in the third report), achieving compliance with current legislation is one of the foremost tasks in realising decent work for millions of women in these twelve countries.



## 2 Legislating for decent work

In this report we give an overview of the most important laws protecting women's rights as workers. With this goal in mind, we do not limit the scope of this report to those rights that apply exclusively to women, but include all those issues that are crucial to workers who are women. As in the first Labour Rights for Women report, we look firstly at the legal framework enabling women's participation and representation in the workplace, the contracts under which they can be employed and the wages to which they are entitled. We then study the legislation regarding non-discrimination, maternity arrangements and protection from sexual harassment.

### 2.1 General legislation and bargaining rights

General legislation protecting workers from exploitation and establishing a rule of law include laws that fall under the scope of the ILO conventions against forced labour (C29, C105), against child labour (C138, C182), protecting the right to collective bargaining (C87, C98). These conventions, signed by almost all countries in the study<sup>1</sup>, guarantee all workers the right to refuse work or quit jobs, forbid the employment of young children and protect workers' representation. These fundamental rights form a quintessential basis for the implementation and defence of any other workers' rights.

### 2.2 Decent work

Decent working conditions are fit within a frame of laws regulating workers' safety and wellbeing both during and after working hours. In this report, we include both those laws that directly legislate working conditions, as well as those laws that make possible the enforcement of the decent work standards. Most countries have legislation outlining the contracts under which workers may be employed and the extent to which they must be protected from the hazards of injury, illness and old age. The Labour inspection convention (C81), ratified by all countries, provides the possibility to submit anonymous complaints to the labour inspectorate in case of work place violations. The Occupational Safety and Health Convention (C155, ratified by South Africa) obliges employers to provide all equipment needed to guarantee a safe working environment and allow employees to refuse to work in dangerous conditions.

<sup>1</sup> India did not sign the conventions abolishing child labour, nor the bargaining conventions. Kenya signed only one (C98) of the two bargaining conventions.

## 2.3 Wage setting

For work to be decent, workers must receive fair wages. Many countries have legislation setting out the lowest wages that may be paid in a country, region or sector. Often, minimum wages also come about through an institutionalised system of collective negotiation. The minimum wage fixing convention (C131) was signed by Egypt, Guatemala, Kenya and Tanzania formalizes the role of trade unions in the setting of minimum wages.

## 2.4 Working time

There are limits to the number of hours that employees may be made to work. Working time legislation regulates the maximum hours workers may be on the job as well as the down time they are entitled to subsequently. The Night Work Conventions C89 and C171, of which the first was ratified by Egypt, Guatemala, India, Kenya, Pakistan, Paraguay and South Africa) prevent women and particularly pregnant women from working nights (although usually exceptions exist for example for nurses). The Home Work (C177), Part-time Work (C157) and Domestic Workers (C189) conventions (not ratified by any of the twelve countries) foresee in equal rights for home and part-time workers respectively.

## 2.5 Non-discrimination

Women's position in the labour market has historically been weaker than that of men. Most countries have adopted a set of laws and policies aimed to mediate this imbalance. All countries signed the convention against discrimination in employment and occupation (C111), granting women equal access to all occupations, to promotions, as well as educational opportunities required to obtain those jobs. The convention includes equal secondary working conditions, like holiday pay and pension. All twelve countries signed the equal remuneration convention (C100), which both establishes the principle of equal pay for work of equal value and obliges them to instate a system of objective job appraisal to facilitate comparison of workers.

The Social Security (Minimum Standards) convention (C102), that in the sample of countries only Peru ratified, sets out the equal rights of women to access social security. The Employment Policy Convention (C122, ratified by Guatemala, India, Mozambique, Paraguay, Peru and Uganda) and the Human Resources Development Convention (C150, ratified by Egypt, India, Kenya and Tanzania) also grant women access to all educations, professions and promotions. The Termination of Employment Convention (C158, ratified by Uganda) forbids dismissals on the basis of sex.

## 2.6 Pregnancy legislation and workers with family responsibilities

Around the world, women combine work in the labour market with care for children and other relatives. The double charge can put women in a difficult and vulnerable position in the workplace. Laws and policies regarding child bearing and rearing can protect parents from being negatively affected at work by care responsibilities at home. The ILO Maternity Protection Convention (C103, C183) protects women from being fired during pregnancy or directly after childbirth and guarantees a sufficient level of income. The conventions guarantee the right to return to the same or an equivalent position, more breaks for women who are still breastfeeding and outlaws any form of discrimination on the basis of pregnancy. Only Guatemala ratified C103 and only Paraguay and South Africa signed C183.

The Workers with Family Responsibilities Convention (C156) outlaws dismissals on the basis of care for children or other dependent relatives. The conventions, signed by Guatemala, Paraguay and Peru, also recommends active policies to facilitate the reconciliation of work and family life.

## 2.7 Protection from sexual harassment

One of the most fundamental issues for women in work is the assurance that their bodily integrity is respected. While women around the world report being sexually harassed by colleagues, bosses and clients, the right to go to work without fear is only very poorly legislated. Sexual harassment is recognised as a form of sex discrimination under Convention 111, although it is not explicitly mentioned in the text of the Convention. C189 includes provisions to protect domestic workers against all forms of abuse, harassment and violence (art 5, 15 and 116), the Indigenous and Tribal Peoples Convention, 1989 (No 169) explicitly seeks to protect women from sexual harassment (art 10 (3)). Gender based violence, however, is not the subject of any binding international Convention and very few countries have a comprehensive legal framework to prevent, address and redress gender based violence in the workplace. Current legal provisions, where they do exist, often fail to cover all forms of gender based violence and lack appropriate responses in terms of remedies and complaints mechanisms. This represents a significant gap in international labour norms as well as in the legal framework of the countries studied in this report.



## 3 Country profiles

All countries in the project are developing countries. Four countries are low income countries (Kenya, Mozambique, Tanzania and Uganda), whereas the remaining eight are classified by the World Bank as middle income countries. In the twelve countries in 2012, the ITUC reports in its yearbook, fourteen trade unionists were killed for their activism, sixty received serious threats, 106 were imprisoned, 288 were injured, 2350 were arrested and 3826 were dismissed from their work places. Freedom House classifies four countries as “free” (India, Indonesia, Peru and South Africa) and the rest as partly free. This means that in the majority of cases civil liberties, like the right of free association and collective bargaining, are still regularly under pressure.

In the remainder of this chapter, we provide an overview of the countries’ legislation in the seven aspects of labour law described above. While we stress that the existence of legislation in many cases cannot guarantee its implementation, we do believe that awareness of it may help in the effects of both workers and employers to achieve compliance and decent work standards.

### 3.1 Egypt

The Arab Republic of Egypt is a lower middle income country in North Africa, home to over 80 million people. It covers over a million squared kilometres of desert plateau, Nile valley and delta between the Gaza Strip, Israel, Libya and Sudan. In 2008, 22% of the population lived in poverty and in 2011, life expectancy at birth was 73 years. Some 32% of the labour force works in agriculture, 17% in industry and 51% in services. A quarter of all women participate in the labour force. Egypt has been independent since 1922 and is governed by a President, Government and a bicameral Parliament. Its legal system is a combination the Napoleonic civil law and Islamic religious law. Egyptian law knows several non-discrimination clauses, but also attributes women fewer rights in some cases, including in family law and access to certain occupations.

In recent years, Egypt has gone through a tumultuous period that has had a large impact on its society as well as its legal system. In the midst of large scale protests in the entire region, Egyptian protesters ousted the government of President Hosni Mubarak in February 2011. The subsequently elected government of President Mohammed Morsi started overhauling Egypt’s legislation, including the writing of a new constitution that was adopted in 2012. However, after renewed opposition protests, the Morsi government was overthrown in an army-led revolution in July 2013 and the new constitution suspended by the military gov-

ernment. At the time of writing of this report, the interim government of acting President Adly Mansour has announced new revisions of the constitution that have yet to come into force. Since both the equality between women and men and freedom of assembly, have been hotly debated issues, the laws outlined in this report may change in the near future.

## **Fundamental workers' rights**

The right to unionise is guaranteed in the constitution, however, registration of a trade union is a long and strictly regulated process, governed by many restrictive rules. A trade union needs to have a minimum of fifty members who are employed in the same company. Activists of unions outside the only recognised national trade union federation, the Egyptian Trade Union Confederation (ETUF) are not protected against dismissal. Workers in Special Economic Zones (2002 SEZs Law) and the high cadres of public sector employees may not join unions. The 2003 Labour Act does not specifically forbid anti-union discrimination, nor are employers obliged to state any reason when firing employees. Under the Civil Societies and Institutions Act, trade unions are forbidden to engage in any political activism (ITUC 2012). This condition leaves employers ample space for various methods of intimidation towards trade unionists. In its 2012 yearbook, the ITUC reports one trade unionist was murdered, five were threatened, ten arrested, forty-three injured and another forty-three dismissed.

The right to collective bargaining is recognised in the 2003 Labour Act, but falls under government scrutiny through a clause requiring agreements to “comply with the law on public order and general ethics”. Strikes are allowed, except in the public sector and strategic sectors, but subject to many qualifying requirements, such as a two-thirds majority of the ETUF board members favouring the decision to strike. Prior to the strike action, its duration needs to be registered. Additionally, strikes are not allowed when an industrial conflict is in a mediation or arbitration process.

## **Decent work**

Most labour rights are written up in the 2003 Labour Law, which through Article 4 does not apply to civil servants, domestic workers and dependent family workers. As such, they are exempt from the minimum wage, maximum working hours and all other provisions in the law. The law allows employers to hire workers on a permanent or fixed term basis at will, as long as a written employment contract is signed willingly and they employee receives a copy at the start of the employment period. The contract has to include provisions on wages, working

hours and employer and employee details. Forced labour is forbidden under article 73 of the 2012 constitution.

Contracts may include a probationary period of at most three months; a worker may not have more than one probationary period with the same employer. Employment contracts can be terminated by either the employer or employee with a notice period of two months in case the employee has worked for less than ten consecutive years of the employer, or three months if the employment history exceeds that time. In case a worker is fired for economic reasons, she is entitled to one month of pay per year worked for the first five years and one and a half month's pay for each of the subsequent years. If a worker is fired in a redundancy process, five months of wages are to be paid to employees with five years of tenure and 12,5 months for workers with ten years of service. If social security contributions were made during the employment period, a worker is also entitled to 16 weeks of unemployment benefits at 60% of the last wage, or for 28 weeks if contributions were paid for 24 months or more.

The Social Insurance Law from 1975 provides full pensions to all people who are at least 60 years of age and have paid contributions for at least 10 years (120 months). The level of pension payments is calculated at 1/45 of reference base earnings of age year that contributions were paid; this proportion is 1/40 for arduous work and 1/36 for dangerous work). Early retirement is also accessible for workers who have paid contributions for at least 20 years (240 months).

An employer is obliged to provide protection against risks to workers' physical safety, including the provision of protective gear and training in how to deal with hazardous materials (articles 208-212). Part IV of the law also provides the labour inspectorate with the mandate to check health and safety in Egyptian work places. If a worker does fall ill for any reason, which does not have to be work-related, she is entitled to a maximum of 180 days of sick leave per year at 75% of pay during the first 90 days, and 85% from the 91<sup>st</sup> to the 180<sup>th</sup> day. During this period, a worker may not be fired. An employer can fire a sick employee after the 180 days are expired and all annual leave days have been taken up as well. In such a case, the employer must communicate the intent to fire the employee within 15 days after the expiration of the sick leave and annual leave days. Insured workers are also entitled to medical benefits and disability benefit in case of work related injuries. In the case of temporary disability, the worker will receive their full pay and in case of permanent incapacity she should receive 80% of the average monthly earnings over the year before the injury. Workers with partial disabilities should receive a percentage of the total disability benefit when their assessed degree of disability is between 35% and 100%, or a lump sum based on 48 months of pension when their assessed degree of disability is smaller than 35%. If a worker dies due to a work related injury, her family is entitled to a survivors pension.

## Wage setting

Minimum wages are determined by the national council for wages established by prime ministerial decree (Decree 983 of 2003). The council is composed of eight experts from government or civil service, four representatives from employer organisations and four members elected by the General Federation of Egyptian Trade Unions. The council is charged with evaluating and setting the minimum wage on a level corresponding to the cost of living. In 2011, the minimum wage for public servants was set to 700 Egyptian pounds per month, but this does not apply to the private sector. The law (article 34) states that the level of the minimum wage needs to be revised annually in increments of at least 7% of the basic salary, but no revision was made in 2013. Article 38 also obliges employers to provide workers from remote areas with transportation and workers in remote areas with housing and food meals, where the food provided may not be deducted from the wage. Furthermore, in accordance with article 35, companies may apply to the national council on the basis of economic hardship when they are unable to pay the annual increments, in which case the council has the authority to grant an exemption from compliance with the minimum wage.

The law attributes the right to oversee compliance with the minimum wage to the labour inspectorate. Labour inspectors have the right to enter and inspect work places, as well as books and papers of the business. In some cases, specified in Decree 111 of 2003, inspectors can enter enterprise premises at night or outside normal working hours. The inspectorate can impose fines for non-compliances, which are dependent on the number of workers whose rights were violated. Article seven expressly states that in those cases where penalties are due, wages have to be paid before the fines due to the treasury.

## Working time

The maximum number of hours a person may work is eight hours per day and 48 hours per week, excluding breaks. Articles 80 and 82 of the labour law dictate that the starting and ending times of a working day may not be more than ten hours apart, except in the case of intermittent work, where the maximum is 12 hours. The daily limit does not apply to cleaners and guards; however, the weekly limit does apply to them due to provisions in Decree 113 of 2003. A lower limit of working hours applies to workers under 18, who may work six hours per day up to 36 hours per week; the working day of pregnant women is reduced by one hour from the sixth month of the pregnancy onwards. The law 133 of 1961 maximises the weekly hours of industrial workers to 42. Employers may shorten the working times of their employees or change the tasks assigned to them in cases of economic hardship, where the employer would otherwise meet the criteria to fire the workers (article 201).

Overtime is allowed for a maximum of two hours per day, except for underage workers and women who have given birth less than six months ago (articles 85, 70 and 101). Employers have to pay a 35% overtime rate during day time and 70% during night time, which is defined as the time between sunset and sunrise (article 85). Underage workers and women in industrial establishments may not work between 7pm and 7am, except in case of force majeure or if they work in administrative supervisory or technical positions. For women to be allowed to work at night, the employer must acquire a license from the Manpower and Emigration Directorate, certifying that the female workers' protection, care, transportation and security are guaranteed (Decree 183 of 2003).

In accordance with article 83, workers have the right to a weekly rest period of twenty-four hours. If the work is performed in a remote area, away from urbanisation, the rest day entitlements may be foregone for a maximum of eight weeks, after which the hours must be added together for a compensatory rest period (article 84). If work is performed during the rest day, the worker is entitled to a compensatory day at a later time (article 85), except if they are underage workers, who may not be made to work during the rest day (article 101).

The employer is obliged to display a schedule of working times, break times and the rest day in a visible place in the enterprise (article 86). During a working day, workers have the right to at least one hour of rest, which can be split into several breaks. Workers may not work more than five hours continuously, or four hours if they are underage (articles 81 and 101). Shift workers, office workers working less than seven hours a day, transport workers, medical workers and retail workers are exempted from the right to a break under Decree 122 of 2003. The same decree, grants workers in eighteen hard and exhausting professions the right to have a one hour break during work time, which is effectively a paid break.

In accordance with article 47 of the labour law, workers who have worked for an employer for at least six months are entitled to 21 days of paid annual leave, plus a maximum of 13 days of paid bank holidays. Workers who have worked for an establishment at least ten years and workers over 50 years of age, have the right to 30 days of annual leave; workers in exhausting, unhealthy work or remote areas are entitled to seven extra days of paid annual leave, on top of the 21 regular days. Annual leave has to be fully paid, but the worker may not work for another employer during the annual leave (articles 47 and 51). If an employee has worked for a company for more than six months but less than a year, they are entitled to a number of leave days proportional to the part of the year they were employed. The employer determines the period in which the annual leave is taken; the employee can only elect the days of annual leave if she or he is still in

education and has to take exams or for a maximum of six days (never more than two consecutive days) of casual leave (articles 48, 49 and 50). Workers, who are made to work on public holidays, shall be paid a 100% premium on top of the normal wage (article 52).

## **Non-discrimination**

While in Egypt women still do not have full equal rights to men, inequalities are mainly found in family courts, which recognise Muslim and Christian religious laws next to the civil code (Tadros, 2010). While in practice large inequalities exist, there are no laws restricting women's rights to ownership and income. The inheritance law (No. 77 of 1943), however, does prescribe that women are entitled to only half the share of an inheritance than men with equivalent family connections to the deceased are (Tadros, 2010, p. 15; World Bank, 2012). The country does have a range of anti-discrimination laws (that are not always enforced) as well as the constitution (article 33) prohibiting discrimination on the basis of sex (Tadros, 2010, pp. 3-7). Articles 35 and 88 of the Labour Law expressly state that all the law's provisions apply to women equally.

The Labour Law (No. 12 of 2003) regulates women's position in paid employment. It forbids unequal payment (article 35) and expressly extends the application of all clauses of the law to include women. The Labour Law also outlaws the dismissal of pregnant women (art 92) and foresees in a 90-day paid maternity leave, provided a woman has worked for her employer for at least 10 months and has not used the provision more than once before. Article 93 also grants the right to two additional paid half-hour breaks during the working day in the first two years after childbirth. The law, however, also has a number of loopholes. First and foremost, domestic servants and agricultural workers are almost always excluded. Secondly, government ministers have the right to bar women from working during certain hours or in certain provisions, currently 29 categories of work, when they consider this to be in the female workers' best interests (Tadros, 2010, pp. 16-17). It is only since 2007, that women have been allowed to serve as judges (Tadros, 2010, p. 20-22).

## **Maternity and care**

The 2003 Labour Law and the 1996 Child Law grant women the right to three months paid maternity leave, half of which is taken before delivery, as well as to two years unpaid parental leave. While civil servants are excluded from the scope of the Labour Law, the Child Law entitles them to take up delivery leave. To qualify for the maternity leave entitlements a woman has to have worked for an employer for at least ten months, she has to submit a medical certificate with the expected date of delivery and may not use the right more than twice during her service period. During the maternity leave, a woman has the right to

receive her full pay, but loses this entitlement if she performs paid work for another employer during this period (Labour Law, article 91; Child Law, article 70). During the period of maternity leave, women cannot be discharged or terminated, but this does not protect a woman from being transferred to another position in the workplace (Labour Law article 92). The 1975 Social Insurance Law states that women are entitled to medical benefits related to pre-natal, child birth and postnatal care during maternity. Through the Labour Law, Child Law and Social Insurance Law, maternity benefits are financed for 75% by the state and 25% by the employer.

The Labour Law (articles 93 and 97) and the Child Law (article 71) give women who are breastfeeding up to two years after delivery, the right to two additional paid breaks of half an hour. Companies employing 100 women or more in one location are additionally obliged to arrange childcare facilities, although enforcement of this rule is poor (Tadros, 2010, pp. 16-17).

## Sexual harassment

The law does very little to protect women's bodily integrity. Good legislation is lacking. While the penal code (article 306, 278 and 268) forbid insults, indecent behaviour and sexual assault, religious laws prevent its application in the domestic sphere and there is little willingness from authorities to prosecute perpetrators in other circumstances (Tadros, 2010, pp. 11-14). There are currently no laws specifically addressing sexual harassment in employment, public places, service provision or education. Egypt has no government office dealing with sexual harassment, nor does it have a specialised court or procedure dealing with complaints of sexual harassment.

However, sexual harassment in public spaces is a big issue in Egypt that has increasingly attracted the attention of local media and NGOs. In April 2014, a draft law was submitted to the government which is supposed to charge law enforcement officers with actively fighting sexual harassment and defines a harasser as someone who "accosts others in a public or private place through following or stalking them, using gestures or words or through modern means of communication or in any other means through actions that carry sexual or pornographic hints".

## 3.2 Guatemala

The Republic of Guatemala is a lower middle income country in the Caribbean, neighbouring Mexico, Belize, El Salvador and Honduras. A little over 15 million Guatemalans live on the country's 108,889 square

kilometres. In 2011, life expectancy at birth was 71 years, while 54% of people lived below the national poverty line. Some 38% of the labour force works in agriculture, 14% in industry and 48% in services, while unemployment is at 4%. Just over half of all women (51%) are in the labour force. The richest ten per cent of the population own 42.4% of total wealth, while the poorest ten per cent own only 1.3%.

Guatemala is a constitutional democratic republic with a civil law system. It has been independent since 1821 and has known peace time since government and guerrilla forces signed an agreement in 1996, ending a 36 year civil war. Freedom House<sup>2</sup> notes in its 2012 country report that enforcement of laws in Guatemala is severely lacking. In an attempt to battle widespread impunity, the country has even handed over part of its prosecutorial competences to an international hybrid court called the International Commission against Impunity (CICIG).

## Fundamental workers' rights

The constitution and labour code recognise the right to unionise for all workers, except in the armed forces and police service. They also forbid anti-union discrimination. To establish a trade union, however, one must represent an absolute majority of the workers in a sector (50% plus one). Union leaders are required to hold the Guatemalan nationality and be employees of the companies where they organise. The constitution and further laws guarantee the right to collective bargaining. To enter collective negotiations unions must prove that they represent at least twenty-five per cent of the company's work force. The government has the right to move industrial conflicts in the public sector and fuel-related businesses into forced arbitration. Unions are allowed to organise strikes, with the exception of workers in education, postal services, transportation, energy production and distribution. In order to proceed to strike action, unions need to have the support of 51% of the workers in a company. The government has relatively large leeway to interfere in strikes, because prison sanctions can be imposed on people carrying out acts "aimed at paralyzing or disrupting enterprises that contribute to the country's economic development". In its 2012 yearbook, the ITUC reports ten Guatemalan unionists were killed last year.

## Decent work

Most labour rights are written up in the 2001 Labour Code. The law allows employers to hire workers on a permanent contract or fixed term contract or for certain work. However, it is forbidden to employ a person on a fixed term contract if the tasks performed are of a permanent nature. For some occupations, short

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2 Freedom House (2012). Countries at the Crossroads 2012: Guatemala. [http://www.freedomhouse.org/sites/default/files/Guatemala%20-%20FINAL\\_0.pdf](http://www.freedomhouse.org/sites/default/files/Guatemala%20-%20FINAL_0.pdf)

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durations or small jobs the employment contract may be verbal. This is the case for farm or ranch work, domestic servants, temporary or accidental workers employed for less than 60 days and workers on certain work contracts if the total remuneration is less than 100 GTQ. All other workers are entitled to a written employment contract. The contract has to include provisions on the date that the employment relationship is entered into, the work to be done, wages and employer and employee details (art. 25-29). Force labour is forbidden under article 4 of the labour code.

Employment contracts can be terminated by the employer for just-cause or in cases of misconduct by the employee with a notice period. The labour code, however, does not specify a notice period in other cases in which the employer wishes to terminate the employment relation. Employees always have to submit a notice if they want to quit their job. The period varies according to the length of the employment period. Workers who have been employed for less than half a year need to give notice at least one week in advance, 10 days if they have worked up to one year, two weeks if they worked for up to 5 years and one month if the employment relationship lasted more than five years. Article 82 of the labour code specifies that if a worker is fired for reasons other than misconduct, she is entitled to one month of salary per year that she worked.

Agreement No. 1124 of the Board of Directors on Regulations on Disability, Old-age, and survivors provides full pensions to all people who are at least 60 years of age and have paid contributions for at least 16 years. A 2010 amendment, however, raises the required years of contribution to 20 years by 2015 and for people who started contributing after 2011 the retirement age is raised to 62 years of age. The level of pension payments is 50% of the average earnings in the last five years before retirement. Workers who have paid contributions for more than the required number of months receive an additional 0.5% for each extra year, up to a maximum of 80% of the last salary.

Under article 197 an employer is obliged to take all precautionary measures to protect the life, safety and health of the employees. The employer is also supposed to organise health and safety trainings, provide protective gear and clothing and to inform employees of possible work related risks to their health. A labour inspectorate exists, but it does not have sufficient powers and resources to check all the work places efficiently.

If a worker does fall ill for any reason, which does not have to be work-related, she is entitled to a maximum of 180 days of sick leave per year at two thirds of her average pay, up to a maximum of 2,400 GTQ. During this period, a worker may not be fired. Insured workers are also entitled to medical and disability benefits. In the case of temporary disability, the worker will receive 66.7% of the average earnings after a one-day waiting period. The benefit will never be less than 8 GTQ per day, or more than 2,400 GTQ per

month. Workers with permanent disabilities should receive a lump sum between 495 GTQ and 4,950 GTQ, depending on the extent of their disability. If a worker dies due to a work related injury, her family is entitled to a lump sum of 412.50 GTQ.

## **Wage setting**

Employers must pay wages in regular intervals, no more than 15 days apart in the case of manual workers and at least once per month for non-manual labourers and domestic workers. Article 90 of the labour code states that wages must be paid in legal currency, but it also allows up to 30% of the wage to be paid in kind.

The private sector minimum wage is set in a three-stage process, set out in the Labour Code (articles 105-115). Firstly, Joint Minimum Wage Boards composed of representatives from employers and trade unions and chaired by the labour inspectorate, send annual recommendations to the National Wage Commission. The National Wage Commission, which is an advisory body of the Ministry of Labour and Social Welfare, evaluates all recommendations and advises the Ministry. The Executive, in accord with the Ministry of Labour and Social Welfare, then fixes the minimum wage per hour, day and month. In government accord No. 359-2012, the minimum wage was set to 2,246.25 GTQ per month in the export and textile sectors and to 2,171.25 GTQ for all other agricultural and non-agricultural sectors. Wages may also be set in collective agreements, but can never fall below the national minimum wage rate. Article 103 of the Labour Code specifies that piece-rate workers may not be paid less than the minimum wage rate, while apprentices may (article 170). The Labour Code and several ministerial agreements charge the General Labour Inspection with ensuring the enforcement of the minimum wage rate and lay out fines and other punishments for its neglect.

## **Working time**

The legal maximum working time is eight hours per day and 48 hours per week, or seven and 38 hours for young workers. In jobs that are neither dangerous nor unhealthy, the working day can be extended to ten hours by mutual agreement between worker and employer, as long as the total working time stays within the weekly maximum of 48 hours. According to the Labour Code, the working hours limit does not apply to domestic workers (article 164) and articles 118 and 124 prescribe a maximum twelve hour working day for a number of occupations, including supervisors, employees representing the employer, working outside the workplace or whose presence alone is required. Young workers, as well as employees in unhealthy and

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dangerous occupations are forbidden from working overtime; others are permitted to work up to twelve hours per day including overtime, which according to article 121 of the Labour Code should be paid at 50% above the normal wage. The hours may, however, be extended beyond the twelve hour limit if cessation of activities poses “the risk of loss of persons, establishments, machinery, equipment or harvest” (article 122). By Government Agreement No. 388-2010, night work may not exceed six hours between 6pm and 6am (or seven, if the work started or ended during the day time) or 36 hours per week (or 42 if it concerns a combination of day and night time).

Employers may schedule working time as a consecutive period or in split shifts. The schedules must be posted in the two most visible sites of the work place (art. 59 and 60). In the case of a continuous working day, workers are entitled to at least a thirty minute paid break (article 119); domestic workers have the right to two hours of breaks for meals and eight hours of consecutive rest (article 164). All workers have the right to a weekly rest period, following five or six days of work. Exceptions can be made for work subject to continuous processes (art. 128) and domestic workers, who receive a paid six hour break on Sunday (art. 164). Work performed on the weekly rest day must be paid 50% above the normal wage rate.

In accordance with article 130 of the Labour Code, workers are entitled to a minimum of 15 days paid annual leave if they have been employed at a company for at least one year continuously, during which they must have worked a minimum of 150 days. For the calculation of the entitlement to annual leave, sick days and paid leave are counted as working days. The holiday pay has to be paid before the start of the annual leave (art. 134). The employer has to make known the dates of the annual leave within sixty days of the start of a workers’ entitlement (art. 132) and is forbidden from making the person work during the annual leave (art. 133) or increase the tasks of workers who are not on leave to compensate for the worker’s absence (art. 132). The regulation of the working conditions of young workers specifies (art. 16) that young workers should, where possible, receive annual leave during school holidays. In addition, all workers are free on twelve public holidays or, when they are required to work on these days, shall be paid at 50% above the normal wage rate (Labour Code, article 127).

## **Non-discrimination**

The Guatemalan constitution grants equal rights to women and men and in 2002, the penal code was amended by decree to criminalise discrimination. By law, both married and unmarried women are free to accept a job, enter all professions and register a business in the same way as men. There are no restrictions

on the sectors, industries or occupations that women may enter. Women also hold the same rights to own property, access institutions and attain loans.

The Labour code forbids discrimination against women in hiring practices (art. 137). Article 89 of the labour code, as well as article 102.C of the Constitution state that women and men must receive equal wage for work of equal value. However, there employers are not forbidden to ask a woman what her family status is during a job interview.

## Maternity and care

At the presentation of a medical certificate expecting childbirth to take place within five weeks, women have the right to thirty days of maternity leave before and fifty-four after confinement (article 152 of the Labour Code). The maternity leave may be prolonged up to three months in the case of illness resulting from childbirth. Fathers are entitled to two days of paid leave (article 61). Women adopting a child under one year of age are also entitled to 54 days of leave (art. 152). During the maternity leave the worker is entitled to full pay. After the end of the paid maternity leave, a woman may choose to take another nine months of unpaid maternity leave.

The benefits are paid for two-thirds by the social security fund if the woman is covered, which is the case when she paid contributions for three of the last six months (Labour Code, art. 152e) or all six months if she is a domestic worker (Agreement No. 1235 of 2009 of the Board of the Institute for Social Security of Guatemala). If a woman is not covered by social security, the employer must finance the entire cost of the maternity benefits (Labour Code art. 152b and art. 28 and 38 of the Organic Law on the Guatemalan Social Security Institution).

The social security institute also provides health care services before, during and after childbirth. Up to ten months after the end of the maternity leave, women have the right to two ten-minute nursing breaks daily, which are counted as paid working time. Workers also receive three days of paid leave in the case of a death in the family, five days when they get married and two days when a child is born (art. 61).

Labour Code article 155 demands firms employing over thirty women to have a special area for breastfeeding and where children under three can be left under supervision of a qualified individual. From three months before confinement, women are forbidden from carrying out heavy physical work (art. 151). During the maternity leave and breastfeeding period, an employer may not dismiss a female worker unless he can prove serious breach of obligations under the contract in front of the labour court. Under article 151, a woman also has the right to return to her former position after the maternity leave.

## Sexual harassment

Guatemala has two laws dealing with domestic violence, being the 2008 Law against femicide and other forms of violence against women and the law to prevent, punish and eradicate violence within the family. Violence against women outside the family is also prohibited by law, but it is not punishable by a prison sentence. Rapists are exempt from prosecution if they are married to the victim and the penal code lays down the criterion that the victim must be an “honest woman” to be considered a victim. There is no legislation in place forbidding sexual harassment, nor are there any provisions protecting women in the work place specifically.

### 3.3 India

The Republic of India is a lower middle income country, bordered by Bangladesh, Bhutan, Burma, China, Nepal and Pakistan. In 2010, 30% of the population lived in poverty and life expectancy at birth was sixty-five. In India, 1.2 billion people, 80% of whom are Hindus, live on 3.3 million squared kilometres. India has been a federal republic since its independence in 1947. Its constituent states have far going legislative competences to rule their own territories. India has a common law system, but different codes exist for Hindus, Muslims and Christians. Of its 498.4 million people labour force, 53% work in agriculture, 19% in industry and 28% in services. The unemployment rate is just below 10% and only 30% of all women are part of the labour force. In 2005, the richest ten per cent of the population owned 31% of total wealth and the poorest ten per cent just 4%.

#### Fundamental workers’ rights

The constitution and labour code guarantee the right to freedom of association in all of India, except the State of Sikkim, and protect activists from anti-union discrimination. Except for the State of Sikkim<sup>3</sup> and in the public sector, workers are free to join and establish unions without government interference. The 2001 Trade Union Act prescribes that unions need to represent at least a hundred workers or at least ten per cent of an enterprise’s workforce, whichever is smaller. The act also limits the number of board members that may be from outside the company workforce.

<sup>3</sup> In the State of Sikkim trade unions’ registration requests need to be approved by the police and registration can be further impeded if the public objects to the establishment of the union.

The right to collective bargaining and to strike are acknowledged and regulated by the Labour Code. However, employers have no obligation to recognise trade unions and rights are limited in the public sector. The still enforced 1947 Industrial Disputes Act foresees in a 14 day strike notice and up to 45 days advance notice in EPZs and SEZs. Freedom to strike is further curbed in some regions of India, like the State of Kerala, which forbids total shutdowns, and the State of Tamil Nadu, which outlawed strikes in essential services and includes minor actions like overtime bans in the definition of a strike. In its 2012 yearbook, the ITUC reports that in the previous year five Indian trade union activists receive threats for the organising activities, a hundred were imprisoned, 179 were injured, 2087 were arrested and 2709 were dismissed by their employers.

## Decent work

The 1946 Industrial Employment (Standing Orders) Act, 1947 Industrial Disputes Act and 1972 Payment of Gratuity Act govern the hiring of workers by employers. The law allows employers to hire workers on a permanent contract or fixed term contract without reference to the nature of the tasks performed being permanent or not. The law does not include an obligation to employers to provide a written contract. An employer is allowed to include a probationary period before permanently hiring a worker. This period is usually half a year and can be extended by three months at a time, but may not last longer than two years in total.

Workers have a right to quit a job after giving due notice and forced or bonded labour is forbidden under The Bonded Labour (Abolition) Act of 1976. Employment contracts can be terminated by the employer on an individual basis with a notice period of one month or effective immediately with payment of a month's wages. If an employer wishes to lay off a large number of workers and in factories, mines and plantations, there is a notice period of three months. The Payment of Gratuity Act states that workers who have been employed continuously for five years by an employer when being dismissed are entitled to severance pay equal to 15 days' wages for each year worked. The Industrial Disputes Act furthermore entitles entrenched workers to the same amount of severance pay. Insured workers who have lost their jobs under no fault of their own and have paid contributions for at least three years are also entitled to a maximum of one year of unemployment benefits at 50% of their daily average wages.

Under the 1995 Employee's Pension Scheme, workers who have paid pension contributions for at least 120 months (10 years) are entitled to a full pension from the age of 58 onwards. People may also choose to retire early, from the age of 50 onwards, but they will receive a reduced pension. In such cases, the pension is reduced by 4% for each year that the person is below 58 years of age. If an insured worker dies while in

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service, when she reached the pensionable age or is already receiving a pension, the family is entitled to a dependents' pension of at least 450 rupees per month for a widow or 150 rupees for an orphan under the age of 25.

Article 45 of the Factories Act requires employers of factory workers to provide employees with information on health and safety at work and to provide first aid facilities during all operating hours in every factory. State governments can make legislation requiring employers to provide protective clothing to workers for free. While each state has a labour inspection system, it is the central Chief Labour Commissioner who enforces labour legislation specifically related to working conditions.

Only workers covered by the Employee State Insurance Act, a minority of the workforce, can claim sick pay when they fall ill. Workers who are not covered by the act may still be covered by various sector specific, occupations and regional acts. Insured workers receive around 70% of their regular pay for a maximum of 91 days in any two consecutive 6 month periods. Insured workers and their families are also entitled to full medical care, as are insured retired and permanently disabled workers (and their families) who pay an annual premium of 120 rupees. Insured workers who suffer a permanent disability should receive disability benefits at 90% of their average earnings, while workers with a temporary total disability will receive 90% of their daily wage until they have recovered. Workers with partial disability will receive a rate of disability payment depending on the extent of their disability. If a worker dies due to a work related injury, their widow(er)s are entitled to 60% of their disability benefit whereas orphans under 25 have the right to 40% of the benefit.

## **Wage setting**

Wages are paid in cash, unless the appropriate government has authorised their payment in kind in the official gazette. The wage period may be set on an hourly, daily, weekly or monthly basis. Wages have to be paid at regular intervals that may not be more than a month apart. The actual payment of wages has to be completed within seven days after the last day of the wage period for employers who employ fewer than 1000 people and within ten days for employers who hire more than 1000 workers.

Most wages are set through collective bargaining at the central, provincial or enterprise level. The wages are informed by the National Floor Minimum Wage, which is a non-binding advice made by the central government currently set at 100 rupees per day. The content of the collective agreements are only binding to parties to the agreement: the employers and their successors, as well as workers in all establishments named in the agreement.

Under the 1948 Minimum Wages Act, various levels of government may also set minimum wage rates in non-unionised sectors with little bargaining powers, after either consulting a tri-partite committee or a public consultation. The list of sectors and occupations and regions to which this procedure applies is written down in the Minimum Wages Act. Appropriate government are only required to set minimum wage rates for scheduled employments on the list, if more than 1000 employees are engaged in it. On a three months' notice, relevant governments may also add new sectors of occupations to the list of sectors for which they set the minimum wage rate. The government must publish the minimum wage rate in the official gazette and it will come into force three months after publication, unless another date is specified in the publication. Furthermore, deviating wage rates may apply for trainees, children under 15, adolescents between 15 but below 18 and piece-rate workers. Disabled workers and family members may be excluded from the scope of the minimum wage.

The payment of minimum wages is overseen by the labour inspectorate, which may also bring claims related to unpaid wages. Both workers and their legal or union representatives may also bring claims of unpaid wages.

## Working time

Working times across India are legislated under the 1948 Factories Act for factory workers and under the 1950 Minimum Wages (Central) Rules for scheduled employment. These laws set the minimum standards across the country, although a multitude of acts and regulations exist that contain higher standards for specific sectors. Articles 54 and 51 of the Factories Act and articles 24-25 of the Minimum Wage Rules set the maximum working time for workers in factories or scheduled employment at nine hours per day and 48 hours per week. The chief inspector can allow longer working hours if the workers are performing urgent and unforeseen works, if the work by its nature needs to be carried out outside normal working time, if employment is intermittent, if for technical reasons the job needs to be finished before the duty is over and in case the work is dependent on irregular action or natural forces. Children below the age of 15 are not allowed to work more than 4.5 hours per day and never more than three hours without a break.

For adult workers, overtime is allowed without restrictions, while it is forbidden for children below the age of 15. Employees who work overtime are entitled to twice their normal wage rate, or 1.5 times the normal rate in the agricultural sector, as laid out in articles 59 of the Factories Act and 25 of the Minimum Wage Rules.

Article 61 of the Factories Act requires employers to display notice periods, showing factory workers' work schedule for every day. Workers are entitled to a weekly rest day. The Factories Act specifies factory workers will be free on the first day of the week and the Minimum Wage Rules state that scheduled employment will not take place on a Sunday. In the case of factory work (art. 52), the employer may advance or postpone the rest day for a maximum of three days, but is not allowed to make employees work more than 10 days without a day off. Employers of workers in scheduled employment may set another day than Sunday as the regular rest day, if the worker has worked for the employer for at least six days and has been informed of the change in rest day. If workers are required to work on a rest day, they have the right to a compensatory day of rest within three days in the case of factory workers. If they lost the rest day due to an exemption by the Chief Inspector, they shall recover the lost day or days within two months. Workers in scheduled employment should receive a compensatory rest day within five days of being deprived of the regular rest day and are entitled to overtime pay if they work during the rest day. For night workers, the rest day will last a minimum of 24 hours and shall start at the end of the last shift. Children under 15 and women are not allowed to work night shifts in factories.

Factory workers have the right to have rest breaks. The Factories Act (art. 56 and 61) specifies that working times, including breaks, may not be spread out over a larger period than 10.5 hours per day – or 12 hours when this is allowed specifically and in writing by the Chief Inspector. Factory workers are entitled to a break of half an hour after five hours of work and children under 15 working in factories have the right to an hour break time after three hours of work.

No annual leave is foreseen for workers in scheduled employment in the Minimum Wage Act, but several sectors have annual leave schemes, like Beedi & Cigar and mineworkers. Factory workers are entitled to 12 days of annual leave once they have worked for an employer for at least 240 days. Children under the age of 15 working in factories have the right to one day of annual leave per 15 days of work in the previous year. Railway workers in companies administered by the government are exempted from the annual leave regulations, as they fall under rules approved by the central government. During the annual leave, factory workers receive their normal wage and if they take at least four consecutive days of leave, those wages shall be paid before the start of the leave. Employers of factory workers may design a schedule of annual leave to ensure continuity of the work if this is agreed with the works committee and the Chief Inspector. Factory workers are required to request annual leave in writing and at least 15 days before the intended start of the

leave. The leave needs to be taken up in no more than three instances, but unspent days can be carried over to the next year, as long as they do not exceed 30 days (art. 79).

## Non-discrimination

Several laws guarantee women's access to land and access to property other than land, but these laws are often ignored, as are those pertaining to women's access to bank loans. Officially, traditions disadvantaging women in inheritance were abolished after Independence but the practices persist. Article 14-16 of the Constitution prohibit discrimination on the basis of gender and guarantee equality before the law.

The Equal Remuneration Act prohibits discrimination on the basis of sex in pay and hiring practices. Under the 1976 Equal Remuneration Act forbids pay discrimination on the basis of sex, but does not specifically require equal pay for work of equal value. Women do not have equal access to all sectors and occupations. The Factories Act prohibits the employment of women in factories for pressing cotton where a cotton-opener is at work. Women cannot work overtime, work night shifts in factories or work in hazardous occupations. In job interviews, employers are not forbidden from asking a woman what her family status is.

## Maternity and care

According to the 1961 Maternity Benefit Act, last amended in 2008, women working in factories, mines or plantations are entitled to maternity leave starting six weeks before the scheduled date of delivery and ending six weeks after delivery at 100% their average daily pay rate. During or on account of the maternity leave, female workers may neither be dismissed, nor may any conditions of service be varied. Employees who fall under the Employees' State Insurance Act of 1948 are subject to other regulations, but can depend on the Maternity Benefits Act if they do not qualify for the provisions of the Employees' State Insurance Act. Some workers, who are not subject to either of the abovementioned acts, may receive some level of maternity benefits under the 2008 Unorganised Workers' Social Security Act.

Under the Maternity Benefit Act, the employer has to finance the maternity leave benefits, which will be given at full pay. To qualify for maternity leave, a woman has to have worked for the employer from whom she claims benefits for at least 80 days in the preceding 12 months; only pregnant women migrating into the state of Assam do not need to fulfil this criterion. If a woman has a miscarriage, she still has the right to the six weeks of post-natal leave. When a woman suffers from an illness due to the pregnancy, delivery, premature birth or miscarriage, the maternity leave may be prolonged up to one month the regular pay rate of maternity leave. Article 8 of the Maternity Benefit Act also obliges employers to provide pre- and post-

natal medical care, or to pay the pregnant employee a medical bonus of 1000 rupees if none is provided. The medical bonus can be increased to a maximum of 20,000 rupees.

During the ten weeks before the birth, pregnant women cannot be required to do arduous work, tasks demanding extended periods of standing or that could otherwise endanger the pregnancy. Upon returning to work, mothers are entitled to additional paid breaks for breastfeeding until the child is 15 months old, as well as nursing facilities (art. 11-13). Article 48 of the Factories Act prescribes that factories that employ more than 30 women on a regular basis, are required to provide childcare for children under six in clean, lighted and ventilated accommodation and under the supervision of qualified women.

### **Sexual harassment**

Indian legislation protecting women's physical integrity in the household is strong but its application is lacking. Additionally, legislation specifically addressing the workplace is recent. In 2013, India adopted The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act. The act forbids sexual harassment in employment and contains criminal sanctions against both sexual harassment in general and in the workplace specifically. The law also mandates the Local Complaints Committee to evaluate complaints of sexual harassment.

## **3.4 Indonesia**

The Republic of Indonesia is a lower middle income country in Asia Pacific, made up of roughly 18,000 islands covering nearly two million squared kilometres between Malaysia, Singapore, the Philippines, Australia and Papua New Guinea. Twelve per cent of the population lives in poverty and life expectancy at birth is 69 years. Indonesia has a population of 247 million people and a labour force of 118 million. In 2012, unemployment was at 22% and 53% of women were in the labour force. Of the labour force, 39% were employed in agriculture, 22% in industry and 48% in services. The richest ten per cent of the population hold 29.9% of the wealth, whereas the poorest ten per cent together own 3.3%.

After its declaration of independence in 1945 the country went through tumultuous periods of liberation struggle, martial rule, guided democracy and New Order government. Free elections and democratic government have been instated since 1999. Indonesia is a republic with a bicameral parliament and has a civil law system based on the Roman-Dutch model.

## Fundamental workers' rights

The constitution and Labour Code guarantee the right to freedom of association and forbid anti-union discrimination. Workers have the right to join unions and unions representing at least half of a company's workforce can register as recognised partners in collective bargaining. Except for civil servants, workers also have the right to strike. Trade unions, however, are closely supervised. Unions must notify the government of any changes in their governing structures or risk being de-recognised. Courts can also order the dissolution of a trade union if they perceive it to work against the principles of the 1945 constitution, the national unity, or if its leaders or members have been imprisoned on sentences of more than five years. The ITUC reports that in 2012, two trade unionists were killed and ten were injured in the course of their union activities.

Collective agreements can be negotiated if a union represents at least 50% of the company's workforce or if its demands are supported by at least half of the workers in a vote. The Manpower Act prescribes that collective negotiations may last up to 30 days before they are submitted to the Ministry of Manpower for arbitration. The law also states that collective agreements are valid for two years and can be renewed for a maximum of one more year. Next to collective bargaining provisions, the Manpower Act obliges all enterprises employing at least fifty workers to establish "bipartite cooperation institutions", which are filled with employer representatives and union and non-unionised workers according to their respective shares in the total workforce of the company.

Strikes are allowed in non-essential services, but only after the government imposed mediation and conciliation processes have failed. According to the 2003 Ministerial regulations, these processes can only be called failures when both parties define them as such, which in practice restricts the right to strike. The authorities must also be informed in advance of the reason, location, start and ending times of a strike. Workers who join unauthorised strikes are automatically considered to have quit their jobs if they ignore two written orders to return to work that have been sent within seven days.

## Decent work

Most labour rights are written up in the 2003 Law on Manpower Affairs. The law refers to entrepreneurs when speaking of employers, thus excluding employers who do not run an enterprise from the scope of the law. As a result, many of its provisions are not applicable to domestic workers.

The law allows employers to hire workers on a permanent contract or fixed term contract, or for piece-work or day work. It is not allowed to employ a person on a fixed term contract if the tasks performed are of a permanent nature. Permanent contracts may include a probation period of a maximum of three months, but fixed term contracts may not. Entrepreneurs are obliged to provide two copies of a written employment contract, one of which is to be provided to the employee. The entrepreneur also has to register the work agreement with the local labour offices.

The contract has to include provisions on the rights and obligations of both the entrepreneur and the employee. When an entrepreneur dismisses a worker, she is entitled to severance pay proportional to the services rendered and compensation pay for rights or entitlements. If a worker wishes to end the employment relationship, she has to submit formal notice at least one month before the intended date of resignation. Force labour is forbidden under Act 19 on the approval of the ILO Convention No. 105 on Abolition of Forced Labour.

Workers are entitled to full pensions if they have paid contributions for at least 15 years. The exact age of retirement is regulated in work agreements, company regulations and collective agreements, and varies between 55 and 60. If the worker dies, her spouse and children under 23 will be entitled to dependents' benefits, regardless of whether the 15 years of contributions were completed but lose the right to benefits when they remarry or start working full time. The dependents' benefits will be between 40% and 60% of the local minimum wage.

Under article 87 of the Law on Manpower Affairs, entrepreneurs are obliged to implement an occupational health and safety management system, to protect the safety of the workers, prevent accidents and control hazards. The Health Act also obliges employers to provide periodic health examinations for their workers. In accordance with Decree 51, the labour inspectorate is in charge of ensuring application of labour laws, including health and safety.

Entrepreneurs employing at least 10 workers or spending at least Rp 1,000,000 per month are obliged to insure their workers in the employees' social security programme. According to article 93 of the Law on Manpower Affairs, if a worker does fall ill for any reason, which does not have to be work-related, she is entitled to a maximum of one year of paid sick leave. The first four months of sick leave will be fully paid, the next four months at 75% of the worker's wages, then at 50% and the last four months at 25%. During this period, a worker may not be fired (art. 153). Workers are also entitled to medical care, including check-ups, medication, hospital and ambulance care amongst other things. The National Social Security Act No.

40 regulates the payment of benefits in cases of workers' disability. In the case of temporary disability, the worker will receive full pay during the first 120 days, 75% of wages for the following 120 days and 50% for the rest of the period until recovery. Workers with permanent disabilities should receive benefits varying from 2% to 70% of the last 60 times monthly income, depending on the extent of their disability. If a worker dies due to a work related injury, her spouse and children under 23 are entitled to benefits.

## Wage setting

At least 75% of wages have to be paid in cash, while the remaining 25% may be paid in kind (1981 Government Regulation No. 8). Wages have to be calculated on a monthly basis, but may also be paid once per week or fortnight.

Most wages are set through bipartite negotiation, while a minimum floor is provided through the minimum wage. Minimum wages are set at the provincial level and sometimes at the sector level. The level of the minimum wage is determined by the Governors on the basis of recommendations by so-called Wage Councils, which exist at the national, provincial and district level. The Wage Councils consist of representatives from the government, employers' organisations and trade unions, supplemented by members from universities and other experts. The minimum wage is set for each province, but provinces may choose to set different minimum wages for separate sectors. In their evaluation of the appropriate level of minimum wage, they take into account workers' adequate living needs, as derived from a provincial level cost study, the level of economic development, labour market conditions and corporate capability. The Governors have the right, but not the obligation to revise the minimum wage level once per year. In cases where companies are unable to pay the minimum wage, Governors may also postpone its application for that specific enterprise for a maximum of one year if an agreement has been reached between the employer and the employees. Enterprises that do not pay the minimum wage without permission from the Governor risk a maximum fine of Rp 100,000 on top of the outstanding wages to workers and a maximum prison term of three months.

The minimum wage is regulated through the Law on Manpower Affairs and several Decisions. As the Law on Manpower Affairs refers only to entrepreneurs, the minimum wage applies only to workers of employers who run an enterprise. Entrepreneurs may not pay less than the minimum wage, but are expected to pay more than the minimum wage as employees have worked for them longer. The Law on Manpower explicitly states that this minimum is foreseen for workers with less than a year's service and that those having worked for an entrepreneur for more than a year should receive wages as negotiated between the company management and the worker or her union. Act No. 80 on the approval of the ILO Convention No. 100 on

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Equal Remuneration for men and women workers for work of equal values, states that women cannot be paid less than men for work of equal value. Workers on a probationary period are entitled to the minimum wage in the same wage as regularly employed workers; piece-rate workers are covered if they have worked for the enterprise for one month or more. The law provides a calculation that entitles day workers to the minimum wage level in proportion to the number of days that they have worked, if they have worked for an entrepreneur for at least one month.

## Working time

The 2003 law on Manpower Affairs regulates working time and its provisions cover all enterprises, thus tacitly excluding domestic workers. By ministerial decisions, some business can be excluded from the law's scope as well. For those falling under the law, it states the maximum working time is 7 or 8 hours per day in 40 hours per week, leaving open the option to work six seven-hour days or five eight-hour days. Children between 13 and 15 may work no more than 3 hours per day and may not perform any hazardous work until they are 18. Children and pregnant women may not work after 11pm and working hours may not interrupt the schooling of young workers. Non-pregnant women can be asked to work during night time, but in such cases the employer is obliged to provide nutritious food and drinks, maintain decency and security in the workplace and provide return or roundtrip transportation for the workers.

Working overtime is allowed up to a certain extent, but must be mutually agreed in writing by the employer and employee and paid at a penalty rate. An employer is also obliged to keep records of the overtime worked, by whom and for how long. Overtime may not exceed three hours per day and 14 hours per week, not counting work on rest days or holidays, although some businesses may be exempted from this limit by ministerial decision. In accordance with the Law on Manpower and the 2004 Decision concerning overtime work and overtime pay, a worker is to be paid at 50% above the normal wage rate during the first hour of overtime and twice the normal rate during the subsequent hours of overtime. Additionally, if more than three hours of overtime are worked, the employer is obliged to provide drinks and food of at least 1,400 calories. Workers with high-level responsibilities, whose working hours cannot be limited according to the law, do not have the right to overtime pay, as long as their wages are higher than those of regular workers.

Workers have the right to half an hour break after four hours of work as well as to breaks necessary to pray and worship according to their religion. Depending on whether they work for seven or eight hours per day, employees also have the right to one or two rest days per week. The law does not specify which days of the week should be designated as rest days. It does, however, consider work during rest days to be overtime

and therefore subject to a higher wage rate. Workers who have a six-day working week are entitled to double their normal pay for the first seven hours of work during the rest day, a triple rate during the eighth hour and quadruple rate for the ninth and tenth hours. Workers on a five-day working week should be paid double during the first eight hours, triple during the ninth and quadruple during the tenth and eleventh.

If an employee has worked for an entrepreneur for at least one year, she is entitled to 12 days of paid annual leave. Workers in enterprises that used to have more favourable annual leave provisions before March 2004 are entitled to one month of leave each seventh and eighth year instead of the regular 12 days. The procedure for the take-up of annual leave has to be detailed in a work agreement, the enterprise's rules and regulations or in the collective agreement. Next to the days of annual leave, all workers are entitled to rest days on dates of national holidays and collective leave. These dates, set in concert by several ministers, vary per year but usually amount to around 16 days. Eleven types of jobs, covering a large part of the labour market, have been recognised by the government to be continuous in nature and these employees may be requested by their employers to work on national holidays at the same rates of overtime pay as applicable to work on a weekly rest day. These eleven types of jobs are health services, transportation services, transportation repair services, tourism industry, telecommunications services, utility services, supermarkets and shopping centres, mass media, security industry, conservation and other jobs where discontinuation of work will lead to the destruction of materials or disrupt the production process.

## **Non-discrimination**

Indonesia's civil code stipulates that men and women have equal ownership rights and that in the event of divorce both spouses retain whatever property they owned prior to the marriage and must divide equally any joint property. Indonesia has equal rights legislation guaranteeing the equality between women and men, which is a constitutional right, as well as combating discrimination in the home and the work place. On the provincial and district level, however, sharia based laws are sometimes passed that impede women's rights in the family. Other laws protecting women's bodily integrity, often lack enforcement or are met by contradictory policies. Harassment in the work place, unequal pay and lack of access to promotions remain big issues in practice, even more so for domestic workers, who are often not protected by the law (Buehler, 2012, pp. 8-9).

Women have the right to access bank loans and credit and to independently conclude contracts. The Law on Manpower Affairs states that any person able and willing to get a job shall have equal opportunities in attaining one in accordance with their interests and capabilities. The law specifies a worker has the

right to receive equal treatment without discrimination from their employer. The abovementioned Act 80 guarantees the right to equal pay for work of equal value. Furthermore, Act 21 on the approval of the ILO Convention No. 111 on Discrimination (Employment and Occupation) mandates all levels of government to actively promote equal opportunities and eliminate all forms of direct and indirect discrimination.

## Maternity and care

Under the Law on Manpower Affairs articles 82-84, all female workers are entitled to three months of maternity leave, paid at full wages by the employer. Of the total three months, 1.5 months of maternity leave are taken up before expected date of delivery and 1.5 months after delivery. This period can be extended if an obstetrician or midwife attests in a medical statement that this is required. Women who suffered a miscarriage also have the right to 1.5 months of maternity leave. Fathers working for an entrepreneur receive two days of paid paternity leave on the day of the delivery or miscarriage and the following day.

Under the Act Concerning Social Security, employees, their spouses and up to three children have the right to health care benefits, including maternity related care. If a pregnant woman provides a doctor's certificate that night work is harmful to her or the unborn baby, an entrepreneur may no longer make her work between 11pm and 7am. After the maternity leave, entrepreneurs are obliged under article 83 of the Law on Manpower Affairs to provide breaks and facilities for breastfeeding, although the law does not contain a reference to the nursing breaks being paid. According to article 100, entrepreneurs are also obliged to provide welfare services, including babysitting facilities. Workers may also request up to two days of paid leave for several family-related events, including marriages, births, deaths, baptisms and circumcision of sons.

Article 153 of the Law on Manpower Affairs protects pregnant and breastfeeding women for discrimination. It forbids discrimination on the basis of sex, pregnancy, breastfeeding or miscarriages. The law also states that a woman may not be dismissed if she is absent from work due to pregnancy, delivery, miscarriage or breastfeeding the baby. In such cases, the dismissal will be declared void and the worker re-employed.

## Sexual harassment

Indonesia has established various laws to protect the physical integrity of women, most notably the Law on Elimination of Violence in the Household, but these are not always enforced. Although sexual harassment is a crime, many women are victims of it. There is no specific legislation dealing with violence against women or sexual harassment in the workplace, education, public spaces or service provision.

## 3.5 Kenya

The Republic of Kenya is a low income East African country with a population of 43 million people, located between Tanzania, Uganda, South Sudan, Ethiopia and Somalia. Forty-six per cent of the population lives below the poverty line and in 2013 life expectancy at birth was 63 years. Three in four workers are employed in agriculture and the remaining 25% in industry and services. According to the World Bank, 62% of women are in the labour force.

Kenya gained independence from the UK in 1963. After a brief period of multiparty democracy, it was governed as a near one-party state by the Kenya African National Union of liberation fighter and founding president of the republic, Jomo Kenyatta, for almost two decades. In the 1990s, opposition parties started gaining ground in the elections. Since the early 2000s Kenya has seen several government changes following democratic elections, despite regular accusations of fraud and large scale violence following the 2007 elections. Since 2010, Kenya has been a presidential system with a bicameral Parliament, broad powers for the 47 counties and a mixed legal system, containing elements of common law, Islamic law and customary law. In 2005, the richest 10% of the population owned 38% of all wealth, whereas the poorest 10% owned just 2%.

### Fundamental workers' rights

Freedom of association is guaranteed by the constitution and further laws; the Labour Relations Act forbids anti-union discrimination against job applicants and employees. However, the act excludes civil servants, prison personnel and youth services workers from the right to unionise. Furthermore, the Registrar of the Trade Unions may impose restrictions on the way funds are used, may audit them and may deny a new trade union registration if it considers the workers the union aims to represents already sufficiently represented by other unions. In every-day practice, union breaking is still a common place. The ITUC reports that in 2012, two trade unionists were arrested and 819 were dismissed from their jobs.

Unions can enter collective bargaining negotiations if they represent at least half of the workers in a company, with the exception of the armed forces. The Labour Code also allows strike action, but only after an unsuccessful 30-day conciliation period overseen by a ministry appointed mediator. Strikes are only allowed over concrete issues related to employment conditions or recognition of the union. In order to ensure enforcement of the law, Kenya is establishing a special Labour Court, taking power away from the ministry's Industrial Court, towards an independent judiciary (Lansner, 2012, p. 16).

## Decent work

Most labour market issues are regulated through the 1982 Regulation of Wages (General) Order and the 2007 Employment Act. While the act does not specifically mention domestic workers, its definition of an employee and employer in article 2 is sufficiently broad to include them.

The law allows employers to hire workers on a permanent contract or fixed term contract, for piece-work or day work. There is no rule against employing a person on a fixed term contract if the tasks performed are of a permanent nature. Permanent contracts may include a probation period of a maximum of six months, which can be extended to one year with the consent of the employee. Entrepreneurs are obliged to provide a written employment contract with all particulars to an employee if the duration of the contract is more than three months.

If an employer wishes to end the employment relationship, she has to submit formal notice or payment for the period of the notice instead. If an employer pays the worker on a monthly basis, the notice period is 28 days; if the worker is paid during shorter intervals, the notice period equals the number of days between payment intervals. Day workers can be fired at the end of the working day without notice. When workers are laid off due to redundancy, they are entitled to severance pay of 15 days of basic wages per year of service. Workers may also end the employment relationship after giving due notice and may not be forced to work against their will. Article 30 of the constitution forbids forced labour, although the maximum penalty is two years imprisonment and a fine of no more than 500,000 Shillings.

Under the National Social Security Fund Act, insured workers are entitled to pensions when they reach the age of 55 or at any later point in time at which they wish to retire. The pension is paid as a lump sum and amount to the sum of employer and employee contributions plus interest. If the worker dies, her dependents will be entitled to her pension.

Under article six of the Occupational Health and Safety Act, employers are obliged to ensure the health, safety and welfare of the persons in the work place. Where necessary, the employer should also provide all required training to ensure health and safety. Article 101 obliges employers to provide free protective equipment and clothing to workers whose work involves exposure to wet or injurious substances. The labour inspectorate is allowed to inspect all work places for health and safety standards, but has few competences to address faults when they are found.

Under the Employment Act, if a worker does fall ill for any reason, which does not have to be work-related, she is entitled to a maximum of 14 days of sick leave per year, the first seven of which are fully paid and the latter at half pay. During this period, a worker may not be fired (art. 46). Workers who are insured are also entitled to medical care, including general care, specialised care, medicine, hospital and ambulance care. In the case of temporary disability, the worker will receive 50% of their regular pay up to 540 Shillings at the presentation of a certificate from the medical board. Workers with permanent disabilities should receive a lump sum payment of 60 months' wages up to 240,000 Shilling, or a part of this depending on the extent of the disability. If a worker dies due to a work related injury, her dependents are entitled to a lump sum of 60 months' wages as well as a funeral grant.

## Wage setting

The constitution mentions the right to fair pay and decent working conditions, but fails to specify what is meant by that. The Labour Institutions Act, however, does note in article 44 that statutory minimum wage remuneration should be based on the needs of employees and their families, the level of wages in the country, social security benefits, economic development, levels of productivity, levels of employment and the capacity of employers to pay the minimum wage.

To define such a wage level, the Minister of Labour establishes a general wages council and an agricultural wages council, as well as any additional sectoral wages council deemed necessary. These councils consist of a chairperson, a maximum of three trade union representatives and three employers' representatives and no more than three independent members. The councils consult with experts and interested parties in order to make a minimum wage recommendation to the minister, which may be broken down by occupation and region. Considering the recommendations, the minister then publishes a note stating the intended change in the minimum wage. For a limited period, mentioned in the note, any person may submit an objection to the future minimum wage level. If any objections are received, these are considered by the wages councils. If none are received, the new minimum wage order is published in the state gazette and laid before the National Assembly within 21 days. The minimum wage rate is published in monthly, daily and hourly rates. In addition, article four of the Regulation of Wages Order states that employees on a monthly contract, whose employers do not provide them with lodging, have the right to an additional housing premium of 15% of the minimum wage.

The Labour Institutions Act (art. 50) states that wages have to be paid in cash and an employer may not make any deductions from the wage, except those lawfully made, such as pension and social security contributions. However, article 17 of the Employment Act allows for payment in kind if both the employee and employer consent to this and as long as the allowance is for personal use and benefit of the employee and does not include any intoxicating spirits or drugs. Article 18 of the Employment Act specifies that piece-rate workers, employees on permanent contracts and those on fixed term contracts of at least one month are to be paid on a monthly basis. Casual workers should be paid at the end of the day, whereas workers performing task work can be paid either at the end of the day or at completion of the task. Fixed term workers with contracts of more than a day but less than a month, are to be paid at the end of the contract period. Article 17 states that wages have to be paid on an agreed working day and place in cash, cheque, money order, or by deposit into the employee's bank account.

After the minimum wage becomes law, every employer has to comply with the minimum wage remuneration. Non-compliance with the law is a criminal offence that can be punished by up to two years in prison and a fine of a maximum of 100,000 shillings on top of the overdue wages. Labour officers, whose competences are regulated in the Labour Institutions Act, may start such proceedings. Any worker, who has been underpaid, however, may also file a complaint to a labour officer for unlawful deduction of wages that happened no more than three years before the date of the complaint.

## Working time

There is a maximum limit on working hours on a weekly basis. While the normal working week is 45 hours, the maximum allowed working time is 52 hours over a six-day working week, or 60 hours for people employed in night work. Under article 27 of the Employment Act, any worker is entitled to one rest day per week, although the law does not specify which day of the week this should be. In Kenya, there is no limit on daily working hours, except for workers under the age of 16, who may neither work more than six hours per day, nor be employed between 6.30pm and 6.30am. Casual or day workers may not be made to work for more than 24 consecutive hours at a time.

Under article eight of the Regulation of Wages Order, workers are entitled to ten public holidays with full pay. These fall on New Year's Day, Good Friday, Easter Monday, Labour Day, Madaraka Day, Idd-ul-Fitr Day, Kenyatta Day, Independence Day, Christmas Day and Boxing Day. Workers are also entitled to 21 working days of paid annual leave per 12 months worked in the previous year. The annual leave days are always additional to the public holidays, rest days and sick leave determined in the law or in collective agree-

ments. If an employment relation is terminated after at least two months of work, a worker is entitled to no less than 1.75 days of leave for each complete month of service. The law does not include any clauses on break times during a working week.

Workers may schedule their annual leave in agreement with their employer, but should schedule a minimum of one uninterrupted leave period of at least two weeks. These two working weeks of leave must be taken up in the year to which the leave accrues or be lost. The rest of the annual leave days can be transferred to the next year, but must be taken up within the 18 months following the end of the leave earning period. If workers have the right to additional leave days on top of the statutory 21 days, through individual or collective agreements, they are free to determine with their employer how these days will be taken up.

Overtime is allowed for adult workers up to a maximum of 116 hours in total in two consecutive weeks, or 144 hours in the case of night workers. Employees who work overtime are entitled to higher pay under article 6 over the Regulation of Wages Order. If an employee works overtime on a normal working day, she is entitled to a premium of 50% on top of her normal wages. If she works on a rest day or holiday, the employer has to pay twice the normal wage rate.

## **Non-discrimination**

Kenya has legislation for gender equality as well as against gender discrimination, although discriminatory traditions and hurdles to taking cases to court do impede women's access to their rights. The 1991 inheritance law enforces equality between women and men, but it is not applied to all citizens and some judges may transfer the case to elders' councils that apply Sharia law, in which daughters are entitled to only half of that to which sons are.

Article 27 of the new constitution that was adopted in 2010, outlaws discrimination on the basis of race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, belief, culture, dress, language or birth. The Employment Act also prohibits discrimination on the basis of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status. Specific offences that are prohibited include discrimination in hiring, promotion and wages. Employers are also obliged to pay women and men equal wages for work of equal value. Workers who fail do so are committed an offence against the law and are liable under article five of the Employment Act.

## Maternity and care

Under the Employment Act, a pregnant worker is entitled to three months of fully paid maternity leave if she provides written notice and a medical certificate at least seven days in advance of the intended start of the leave. Under article 29, male employees are entitled to two weeks of paternity leave at full pay.

There are no specific clauses detailing the extension of the maternity leave, but two options do exist. A worker may, in agreement with the employer, take up annual leave days in order to extend the leave. Secondly, in case of illness or complications from the pregnancy or delivery, a medical certificate entitles the worker to seven days of fully paid leave and another seven days on half pay. There are no pregnancy-specific medical benefits, but the Employment Act does oblige employers to provide sufficient medical care and attention. Medical care may also be attained under the National Hospital Insurance Fund Act from 1998, but this is dependent on the payment of compulsory and voluntary employee contributions having been paid.

During the maternity leave, women cannot be fired due to article 5 of the Employment Act, which forbids discrimination on the basis of pregnancy in respect of termination of employment. When a woman is fired during pregnancy, she can take her employer to court and the burden of proof shall lay with the employer. Article 29 of the Act also entitles women to return to the same position she held before the pregnancy, or to a reasonably suitable job on terms and conditions no less favourable than those that would have applied if she had not taken up maternity leave.

## Sexual harassment

The Employment Act and the Sexual Offences Act forbid sexual harassment in the work place and obliges employers to formulate a policy statement making this clear to all employees. Sexual intercourse is only considered consensual when a person agrees by choice and has the freedom and capacity to make that choice. The definition of sexual offences includes rape, gang rape, attempted rape and sexual assault and unwanted sexual advances or requests by a person in a position of authority or trust. However, there is no section in the law that specifically addresses sexual harassment in a form other than genital manipulation or penetration if the perpetrator is not a person in a position of authority or trust.

Sexual harassment, under the two acts, is specifically forbidden in employment and education, but there is no mentioning of public places or service provision, leaving women vulnerable to harassment by clients. There is no specific legislation dealing with violence in the family, nor is there a separate government body charged with the prosecution of sex crimes.

## 3.6 Mozambique

The Republic of Mozambique is a low income South-eastern African country, bordering South Africa, Swaziland, Zimbabwe, Zambia, Malawi and Tanzania. Its population of 25 million, half of which live below the poverty line, inhabit the country's 800,000 square kilometres of land. Life expectancy at birth is 52 years. Of its 10 million labour force, 81% works in agriculture, 6% in industry and 13% in services; 87% of women are in the labour force. The richest 10% of the population owns 37% of the resources, whereas the poorest 10% own just 2%.

Mozambique has been independent since 1975. Mozambique is a presidential system with a unicameral Parliament and a mixed legal system of Portuguese civil law, Islamic and customary laws. Most of the rules concerning the labour market are set forth in the Labour Act; there is a separate legislation, Decree 40/2008 on Domestic Work, that sets out the rights and obligations for domestic workers.

### Fundamental workers' rights

The constitution contains the right to join a union, to safe working conditions, to strike, to paid holidays and to work. While a General Law on Public Servants is currently in the making, civil servants do not yet have the right to organise. In accordance with the Labour Act, the central labour administrations has forty-five days to register a trade union. The act also allows the authorities to force disputes in a long list of essential services into compulsory arbitration. Workers on strike may not disturb the non-striking workers, whose right to work is protected. Furthermore, strikes may not interfere with the operation of minimal services, which limits the kind of strike actions that can be undertaken.

### Decent work

The law allows employers to hire workers on a permanent contract, a fixed term contract or an unspecified term contract. However, it is forbidden to employ a person on a fixed term contract if the tasks performed are of a permanent nature. Permanent contracts may include a probation period of a maximum of 180 days for higher level and managerial personnel and no more than 90 days for all other workers. In the case of fixed term contracts, the probationary period may not exceed 15 days for an unspecified term contract of at least 90 days or fixed term contracts of up to six months. The maximum period is 30 days for fixed term contracts of between half a year and a year, or 90 days for fixed term contracts of more than one year. Employers are obliged to provide a written employment contract if work is to be carried out for more .

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than 90 days. If the contract does not mention a period for which the worker shall be employed, it will be considered a permanent contract (Labour Act, art. 46-50).

If an employer wishes to end the employment relationship during the period of the contract for other reasons than misconduct, she has to submit formal notice or payment for the period of the notice instead, as well as provide a reason for termination based on structural, technological or market related grounds. The employer must also provide evidence that the termination is essential to the competitiveness, economic restructuring, administrative or productive reorganisation of the company. In such cases, employees are entitled to severance pay under article 130 of the Labour Act. The severance pay corresponds to 30 days of wages per year of service for employees whose basic monthly minimum wage, including length of service bonus, is between one and seven times the national minimum wage. If the wage is between eight and ten times the minimum wage, employees are entitled to 15 days per year of service, 10 days when the wage is between 11 and 16 times the minimum wage and three days per year of service if the employee's wage is more than 16 times the minimum wage.

Under article 123 of the Labour Act, an employer can also temporarily suspend employment contracts for economic reasons, which are market related, technological factors or disasters outside the employer's control that affect the normal business of an enterprise or establishment. During the first month of such suspension, a worker is entitled to 75% of normal wages, 50% in the second month and 25% in the third month, on the condition that the reduced wages do not fall below the national minimum wage.

Workers may also end the employment relationship after giving due notice and may not be forced to work against their will. Employees on a fixed term contract must give at least 30 days' notice; workers on permanent contracts must give 15 days' notice if they worked for an employer between six months and three years, or 30 days when they have worked for an employer for more than three years. Article 84 of the constitution forbids forced labour.

Under Decree 53/2007 on the Regulation of Compulsory Social Security, workers are entitled to pensions when they reach the age of 55 (women) or 60 (men) and have paid at least 10 years of pension contributions. Alternatively, workers who have been registered for at least 30 years and paid contributions for no less than 25 years, are entitled to retire regardless of their age. The payment level of the old age pension is dependent on contributions, but may not fall below 60% of the national minimum wage. If a worker who is entitled to pension payments dies, 50% of their pension will be paid to the widow(er) and the rest is divided among their children.

Under articles 59 and 216 of the labour Act, employers are obliged to create and develop adequate means for protecting the physical and mental integrity of employees and to constantly improve working conditions. The employer has to ensure that all work posts as well as points of access and exit to the workplace are safe and free of risk to employees. Where necessary, the employer should provide free protective equipment and clothing to workers, inform them of possible risks and instruct them on rules on hygiene and safety at work.

Labour Act article 103 and 105 consider absence from work due to illness as justified absence. However, the law does not provide for wages to be paid during the absence. By mutual agreement between employer and employee, unpaid leave may be granted for the duration of the illness if all annual leave days for that year have been used up. Insured workers will also be entitled to medical benefits, including general medical care, specialised care, medicine, dental surgery, hospitalisation and essential medical supplies. If a worker suffers a work related disability they are entitled to disability benefits. Workers with total disabilities should receive disability benefits equal to 100% of their annual earnings. Workers with partial disabilities should receive a proportion of their wages depending on the extent of the disability, or a lump sum of three years pension if the assessed degree of disability is less than 15%. If a worker dies due to a work related injury, her dependents are entitled to a survivors benefit of six months' salary.

Under article 259 of the Labour Act, the labour inspectorate is in charge of monitoring compliance with the law. The competences of the labour inspectorate, however, are not yet fully in line with the ILO convention 81.

## Wage setting

Minimum wages are set for nine different sectors by the Government, which does so at the advice of the Labour Advisory Commission on Employment. In this commission both employers and trade unions are represented. The eight sectors for which separate minimum wage rates exist are: (1) agriculture, livestock farming, hunting and forestry, (2) fishing, (3) mineral resources industry, (4) manufacturing industry, (5) water, gas and electricity, (6) construction, (7) non-financial services, (8) financial intermediation and (9) the public sector. The minimum wage rates are revised in April of each year.

Wages may not fall below the minimum wage, yet higher wages may be agreed in individual employment contracts or through collective agreements. Wages can be based on output, time worked or a combination of the two. At least 75% of the wages must be paid in cash (art. 113). The wages must be paid at regular intervals, which may be weekly, fortnightly or monthly. An employer who pays wages below the minimum

wage or below the agreed wage, may receive a fine of no more than ten times the minimum salary per affected worker.

## Working time

The standard working time, set out in article 85 of the Labour Act, is eight hours per day and 48 hours per week. Workers between 15 and 18 years of age may work no more than seven hours per day and 38 hours per week (art. 23) and domestic workers may work up to 54 hours per week and nine hours per day (Decree 40, art. 18). Articles 85 and 86 of the labour act also set out a number of exceptions for other workers. The law permits the extension of daily working hours to nine, if a worker receives an additional half-day rest in return. The maximum working hours can also be increased to 56 hours per week if agreed in a collective agreement. Lastly, the working hours may be extended for employees in jobs that are highly intermittent, preparatory or ancillary or in case of force majeure. Working hours may also be reduced by collective agreement or law in the case of industrial activity or due to increased productivity, as long as the reduction does not cause any economic or social inconvenience.

After prior consultation with the relevant trade union body, employers must establish a working hours schedule for their employees, except those in managerial or supervisory positions (art. 87). The work schedule must be displayed in a visible location in the workplace. Wherever possible, employers should make schedules that are compatible with the interests of the workers, particularly those who attend education or vocational training courses. Workers can also be employed on part-time contracts, which is defined as no more than 75% of the standard working hours (Labour Act, art. 93-94). Part-time workers may not be treated less favourably than their full-time colleagues and have the right to the wages corresponding to their occupation or duties, in proportion to the number of hours they work.

During the eight-hour working day, employees are entitled to at least half an hour of rest time, whereas the break may not last longer than two hours (Labour Act, art. 88). Domestic workers also have the right to half an hour break, but during these breaks they are not prevented from exercising their functions of surveillance and assistance (Decree 40, art. 19). The Labour Act (art. 95) also entitles all employees to a weekly rest period of at least 20 consecutive hours and specifies that Sunday is the normal rest day. Workers in jobs where the continuity of service has to be guaranteed, such as in sales and cleaning, or doing tasks that by their nature have to be performed on Sunday, may have a different day of rest.

Workers are also entitled to annual leave, which article 98 of the Labour Act says can neither be renounced nor denied. Article 99 outlines that employees are entitled to one day for every month of service during the first year of employment; two days per month in the second year; and 30 days per year from the third year of service onwards. The annual leave is meant to be taken up in a single, uninterrupted period. However, by mutual agreement between employer and employee, it can be divided into several blocks of at least six days. If the running of the enterprise requires it and in consultation with trade unions, an employer can decide to grant annual leave at the same time to all employees. If an employer has a serious reason, part or all of the annual leave can be transferred to the next year, after consultation took place with trade unions and the labour inspectorate.

Domestic workers have the right to the same number of days of annual leave as other employees. However, article 22 of Decree 40 also states that the leave can exceptionally be paid in cash instead of days off, if the employer and domestic worker sign a written contract agreeing to this and if the worker receives at least five days of actual annual leave. If a domestic worker has been with an employer for more than three months but less than a year, she is still entitled to one day of leave for each month of work.

Overtime is allowed up to a limit and against a penalty rate for specific reasons. Article 90 of the Labour Act states that employers may request employees work overtime only when the workload increases but does not justify the hiring of an additional employee or when there are material reasons. No-one may work overtime for more than eight hours per week, 96 hours per quarter and 200 hours per year. Under article 115, overtime during week days must be paid at a 50% bonus rate on top of the normal wage, whereas overtime after 8pm, on rest days and public holidays must be paid at twice the normal rate. In addition to the 100% overtime pay, employees who work on a rest day, have the right to a compensatory rest day within three days if they worked for more than five consecutive or intermittent hours, and to half a day if they worked for a shorter interval of time. According to article 98 of the Labour Act, employees cannot refuse to work on a rest day or public holiday in emergency cases, to prevent an accident or to repair machinery essential to the functioning of the company.

Night work, which is work performed between 8pm and the start of normal working hours the following day, is allowed but should be paid at a 25% premium. From the third month of a pregnancy, women may not work overtime or night work.

## Non-discrimination

The Mozambican constitution states that “men and women shall be equal before the law in all spheres of political, economic, social and cultural affairs” and the government regularly launches policies to improve the position of women. Article 112 also guarantees the right to equal pay for work of equal value, which is reinforced by article 108 of the Labour Act.

Article 11 of the Labour Act forbids employers from dismissing, punishing or otherwise causing prejudice to a female employee for reasons of alleged discrimination or exclusion. All employees are also guaranteed equal rights at work under article 54 of the Labour Act, but women are not allowed to work in industries that are considered harmful to their health or reproductive functions.

## Maternity and care

Under article 10 of the Labour Act, pregnant women have the right to 60 days of paid maternity leave, of which 20 have to be taken up before the expected date of delivery. Fathers receive a maximum of one day of paternity leave every two years, which has to be taken up immediately following the birth (art. 12). The maternity benefits are paid through the social security system. Decree 53/2007 on the System of Compulsory Social Security for workers specifies that the benefits will be paid based on the average daily wage a woman received in the preceding six months. Article 11 of the Labour Act states that workers may not be fired without just cause during the pregnancy leave or the year after.

If a woman is prevented from working because of danger to her health or that of the child at an earlier stage of the pregnancy, she is entitled to a leave of absence for as long as necessary and medically prescribed. This leave of absence has no effect on the length of the maternity leave.

At returning to work after maternity leave, the employee is entitled to additional paid breaks during the working day in order to breastfeed. These breaks amount to two half an hour breaks, or one break of an hour if she works a single uninterrupted shift. Female employees are allowed to absent themselves from work without pay for a maximum of 30 days per year to take care of their children if they are ill or in case of an accident. Women cannot be fired or disadvantaged if they make use of this emergency family leave provision, outlined in article 11 of the Labour Act, but will not receive any wages for the days they took the leave.

## Sexual harassment

Article 11 of the Labour Act expressly forbids sexual harassment in employment, by stating that female employees must be respected and any act against their dignity shall be punished by law. The same article

prescribes that employees at the workplace who carry out acts against the dignity of a female employee shall be subject to disciplinary proceedings. When the perpetrator of sexual harassment is the employer or the employer's agent, a worker is entitled to compensation to the amount of 20 times the minimum wage.

## 3.7 Pakistan

The Islamic Republic of Pakistan is a lower middle income country in Southern Asia. Its population of 193 million live on 796,000 square kilometres that are bordered by Afghanistan, China, India and Iran. Life expectancy at birth is 67 years. Of its 45 million labour force, 45% works in agriculture, 21% in industry and 34% in services; 23% of women are in the labour force. The richest 10% of the population owns 39% of the wealth, whereas the poorest 10% own just 4%; 22% of the population lives below the poverty line.

Pakistan has been independent since 1947. Pakistan is a presidential republic with a bicameral parliament and a common law system with traces of Islamic law. The federal government has devolved far going authorities, including aspects of the supervision of labour law and administration, to the provinces.

### Fundamental workers' rights

The right to join a union is anchored in the constitution. However, since workers in agriculture and the informal industrial sector are excluded from protection by the law, over half of the workers are effectively devoid of this right. In workplaces where the right to unionise applies, problems are encountered in practice with the requirement for 25% of the workers to have joined a union before it is recognised.

While the right to freedom of association is protected in the constitution, laws enforcing this right are lacking and no protection from anti-union discrimination exists. In 2010, the responsibility for labour matters was devolved from the federal to the province level, making access to the right to freedom of association uneven across the country. The current industrial relations legislation at the National level is Industrial Relations Act 2012 which caters for trans-provincial unions. Provincial level Industrial Relations Acts have been promulgated in all the four provinces still preventing the workers to from informal sector and agriculture sector (except Sindh) to join and form unions.

The Service Tribunals Act (section 2A) denies workers in autonomous bodies and corporations, which covers entire sectors like telecommunications, gas and banking, the right to take labour related conflicts to court. Any gathering of more than four persons requires prior police authorisation. In the banking sector, only bank employees are allowed to serve on trade union boards.

Collective bargaining is allowed outside the public sector, essential services, Economic Processing Zones and the abovementioned sectors excluded by the federal and provincial industrial relations acts, when a trade union represents at least one third of the company's workforce. When more than one registered union exists in a company, workers have to be balloted to choose which one will represent them in the collective bargaining negotiations. Strikes have to be announced at least one month in advance and the authorities have broad powers prohibiting strikes that last longer than one month. Under the 1999 Anti-Terrorist Ordinance, non-authorized strikes and any other kind of industrial action are classified as "civil commotion", which is an offense carrying prison terms. The ITUC reports that in 2012, one Pakistani trade unionist was killed, fifty were threatened, six imprisoned, 213 arrested, 45 injured and 153 dismissed.

## Decent work

The law allows employers to hire workers on a permanent contract or a fixed term contract. However, it is forbidden to employ a person on a fixed term contract if the tasks performed are of a permanent nature. Contracts may include a probation period of a maximum of three months. Under the Standing Orders Ordinance, employers are obliged to provide a written employment contract specifying the terms and condition of employment.

If an employer wishes to end the employment relationship formal notice has to be submitted, which is either a one month notice period or payment for the period of the notice instead (Standing Order 12). In accordance with the Standing Order 12, workers are entitled to 30 days of severance payment for each year they worked for an employer, except in cases where the worker was fired for misconduct. Workers also have the right to terminate an employment relationship after giving due notice. Forced and bonded labour is prohibited under the 1991 Bonded Labour System Abolition Act.

Under the Provincial Employees Social Security Ordinance, workers are entitled to pensions when they reach the age of 55 (women) or 60 (men) and have paid at least 15 years of pension contributions. Workers who have already paid 15 years of contributions and are between 55 and 59 (men) or 50 and 54 (women) are entitled to reduced pensions if they wish to retire. The pension is calculated as 2% of the average monthly wages in the last year, multiplied by the number of years that contributions were paid. In the case of early retirement, the full pension is reduced by 0.5% for each year that month that the pension was taken before the official retirement age. The pension may not be less than Rs. 3,600 and workers not meeting the full or partial pension requirements can apply for an old age grant. If a pensioner dies, 100% of the minimum

pension will be distributed among the spouses. If the spouse are not alive, the survivors' pension is paid to the children or, in third instance, the deceased's parents.

Under chapter three of the Factories Act, employers are obliged to provide a safe and healthy working environment to workers, as well as to offer all necessary instruction, training and supervision to ensure health and safety. The 2006 Labour Protection Policy states that employers should provide protective clothing and equipment to workers, whereas article 23 of the Factories Act prescribes compulsory vaccination and inoculation of workers at the cost of the employer.

Workers covered by the Provincial Employees Social Security Ordinance are entitled to paid sick leave for a maximum of 121 days per year, or 365 days in case of cancer or tuberculosis. During this period the worker should receive 75% of her last drawn wages, or 100% in the case of cancer or tuberculosis – although arrangements might divert slightly per province. According to article 75, workers may not be dismissed while they are on sick leave. Insured workers will also be entitled to medical benefits, including general medical care, specialised care, medication, hospitalisation and transportation. If a worker suffers a work related disability she is entitled to disability benefits. Workers with total permanent disabilities should receive disability benefits equal to 75% of their average earnings in the last 12 months (100% in the Punjab province). Workers with partial permanent disabilities should receive a proportion of their wages up to a maximum of 66%, depending on the extent of the disability. Workers with temporary disabilities should receive 60% of their average wage (100% in the Punjab province) after a waiting period of three days up to 180 days and remain entitled to it until they are fully recovered or certified as permanently disabled. If a worker dies due to a work related injury, her dependents are entitled to a survivors benefit. Widows and needy or disabled widowers are entitled to 60% of the deceased workers' pension entitlements, orphans under the age of 16 have the right to 20% and full orphans 40%. Insured workers who become disabled due to reasons unrelated to work and are assessed with a loss of at least 67% of their earnings capacity are entitled to 2% of their average earnings over the last year multiplied by the number of years of contributions – at a minimum of Rs. 3,600.

The labour inspectorate is in charge of monitoring compliance with the law. The labour inspection system, however, has been devolved to the provincial level. In its 2013 proceedings, the International Labour Conference expressed its concerns about limited and unequal inspections due to the devolution.

## Wage setting

Pakistan has several procedures for minimum wage fixing. The 1969 West Pakistan Minimum Wages for Unskilled Workers Ordinance allows the provincial government to set minimum wages without consultation of the social partners; although some form of social dialogue may come to exist because the 2010 Government of Pakistan Labour Policy refers to consultation at the Pakistan Tripartite Labour Conference. The resulting minimum wage rates applies to all employees, except apprentices, in commercial and industrial establishments where at least 50 people are employed or were employed in the last year. The rate does not apply to employees of the state or in services declared to be in public utility by the provincial government.

Minimum wages for skilled and semi-skilled workers are fixed under the 1961 Minimum Wages Ordinance, which covers all employees, except employees in the federal or provincial government, in agriculture or in coal mines (as the latter are covered under the Coal Mines Ordinance). Under the Minimum Wages Ordinance, the provincial governments receive recommendations from Provincial Minimum Wage Boards, which consist of a chairperson, one representative from trade unions and employers each and an independent member. If the board makes recommendations for minimum wages for one specific sector, it will be enlarged to include a trade union and an employer representative from that sector. The boards consider the cost of living, economic conditions and any other factors that are considered relevant to making a recommendation. The provincial government may either receive the recommendation and declare it to be the new minimum wage, or may send it back to the board for reconsideration. The Minimum Wages Board can then either adopt a revised recommendation or issue a report explaining why it sees no grounds for revision. The minimum wage rates apply to industries in a province per category of worker or per sector. After no less than one year and no more than three, the Boards should make new recommendations for updating the minimum wage.

Under the 1966 Apprenticeship rules, apprentices are entitled to half of the regular wage for the first three years of employment and to the regular wage from the fourth year onwards. Specific rates sometimes exist for juvenile workers under the minimum wages ordinance, as may minimum wage and minimum time rates for piece-rate workers.

Employers must pay at least the minimum wage rate or the rate set in a collective agreement to which they are a party. The labour inspectorate may enter the premises of an employer and issue fines for non-compliance with the minimum wage. The Minimum Wages Ordinances and the 1936 Payment of Wages Act all allow for some payment of wages in kind, but limit the extent to which this is allowed. Wages must

be paid according to regular intervals of no more than one month. The act (art. 5) also outlines that wages must be paid within seven days after the end of the wage period, or 10 days in the case of companies employing over 1000 workers.

## Working time

Most working time is regulated on the sectoral level, but national minimum standards do exist under the 1934 Factories Act. The maximum working time is 9 hours per day and 48 hours per week (Factories Act art. 34-36). Male workers in seasonal factories may work up to 10 hours per day and 50 hours per week, whereas children under the age of 16 are not allowed to work more than five hours on any single day. Provincial governments may also grant exemptions from the maximum working time rule to companies when they are faced with exceptional pressure of work or in cases of urgent repairs, work that by its nature has to be performed outside the limits, workers on intermittent jobs or for work that necessarily and for technical reasons has to be performed continuously.

Under article 37 of the Factories Act, factory workers have the right to rest breaks during the day. This may either be one hour of rest after a maximum of six hours work, or half an hour's break after no more than five hours and a second half hour break after no more than 8.5 hours. Children under the age of 15, may not work for more than three hours consecutively (Employment of Children Act, art. 7).

The total hours on the work floor, including both working hours and breaks, may not extend beyond 10.5 hours per day for most workers, 11.5 hours for male workers in seasonal factories and 7.5 hours for children below the age of 16. When a worker's shift extends beyond midnight, the hours worked after midnight are counted as belonging to the day that shift started (Factories Act, art. 38, 46 and 54). Women, adolescents and children are not allowed to work night shifts. Under article 39, employers should inform employees working on shifts, either of their fixed shifts or of the shifts they are to work until the next periodical change of shifts. This information should be clearly displayed at a place near the main entrance.

Under article 35 of the Factories Act, workers are entitled to one day of rest per week, which in general is Sunday. However, another rest day than Sunday may be chosen if the manager of the factory has delivered a notice to the office of the inspector about the intention to employ workers on a Sunday and the rest day that will substitute it; a notice containing the same information has been displayed in the factory and the change may not lead to any person working more than ten consecutive days. Provincial governments are allowed to grant exemptions to the requirement to grant adult workers one day off after six or ten days for several reasons, including the seasonal nature of the work, natural disasters, prime necessity and the nature

of the work. In such cases, the workers will receive an equal number of rest days as they forewent in the period of continuous work, as soon as the circumstances allow it.

All factory workers are entitled to twelve days off due to public holidays, during which they should be paid. After having worked in a non-seasonal factory for one year, workers are entitled to 14 days of leave, or any alternative arrangement provided in the company or collective agreement and sanctioned by the provincial government (Factories Act, art. 49). During these days of paid leave, workers are entitled to their average daily wages from the last three months, excluding overtime pay. The 14 days of annual leave should be taken up in a single period and half of the holiday pay should be received before the start of the leave. Under article 49, when the annual leave days are not taken up, they are transferred to the next year.

Adult workers may work overtime, for which they must be paid at twice their normal wage rate (Factories Act, art. 47). If employees work on a public holiday, they are entitled to one additional compensatory holiday with full pay and a substitute holiday, thus amounting to three times the normal wage rate (Factories Act, art. 49).

## Non-discrimination

The Pakistani constitution upholds the principle of equal rights and equal treatment of all persons, but in practice patriarchal traditions are deeply rooted. Pakistan upholds a number of Islamic laws that attribute inferior rights women, especially in the domain of family law. Most existing labour rights policy targets the public sector, where women are formally protected from discrimination and a 10% quota exists.

Article 27 of the constitution forbids discriminatory hiring practices in the public sector, stating that “No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth”. Women are, however, barred from entering several occupations that are reserved to men because they are considered to entail the rendering of services or performance of duties that cannot adequately be done by members of the other sex. Article 15 of the West Pakistan Minimum Wage Rules states that the principle of equal pay for work of equal value must be upheld in the process of fixing wages.

## Maternity and care

Under the West Pakistan Maternity Benefit Ordinance (1958), women are entitled to 12 weeks of fully paid maternity leave if she has worked in an establishment for at least four months immediately preceding the leave. Women are forbidden from working in the six weeks directly following childbirth. The maternity

benefits are financed by the employer, to whom the pregnant woman must give notice either verbally or in writing at least six weeks before the expected date of delivery (art. 5). If the worker does not give notice until after having given birth, she only has the right to six weeks of maternity leave.

Women in jobs falling under the Provincial Employees' Social Security Ordinance 1965 are entitled to the same amount of maternity leave and pay if social security payments were made for no less than 180 days in the 12 months preceding the date of confinement. Women under the Provincial Employees' Social Security Ordinance are also entitled to maternity related medical care if their contributions were paid for at least 180 days of the last 12 months or 90 days during the last six months.

There is no federal provision granting paid or unpaid leave to new fathers, except in the Punjab province, where men can get a up to seven days of leave under the 1981 Revised Leave Rules. Men can take up this paternity leave a maximum of two times during their career.

Both the constitution (art. 25) and the Provincial Employees' Social Security Ordinance forbid employers to dismiss, discharge, reduce or otherwise punish an employee in the period in which she receives maternity benefits. Employers may neither give notice of dismissal during the maternity leave, nor may the give notice in such a way that it will expire during the leave. If a worker is dismissed without sufficient cause in the six months preceding the birth, she retains her entitlements to maternity leave and pay under the West Pakistan Maternity Benefits Ordinance.

## Sexual harassment

The Protection Against Harassment of Women at Workplace Act protects women from sexual harassment at work and includes a maximum prison term of three years for offenders. A woman has the right to press charges against her attacker. The law, however, does not cover sexual harassment in service provision or in education. The Federal Ombudsman for Protection against Harassment of Women in the Workplace is charged with overseeing the application of policy against sexual harassment in the workplace.

## 3.8 Paraguay

The Central South Latin American Republic of Paraguay is a landlocked lower middle income country covering the 406,000 square kilometres between Argentina, Bolivia and Brazil. Paraguay has a population of 6.6 million people, life expectancy at birth being 77 years. Paraguay has a labour force of 3 million people

and 61% of women are economically active. Over a quarter of Paraguayans work in agriculture, 18% work in industry and 55% in services.

Paraguay became independent in 1811, but went through several wars and a period of dictatorship in the 19<sup>th</sup> and 20<sup>th</sup> century, before transitioning to democracy in the 1990s. Paraguay is a constitutional republic with a bicameral parliament and has a civil law system drawing on Argentine, Spanish, Roman and French civil law models.

## **Fundamental workers' rights**

With the exception of police and military personnel, all workers have the right to form and join unions. The constitution and Labour Code protect the right to freedom of association and outlaw anti-union discrimination. However, violations of trade union activists' rights and collective agreements are still common, particularly in the private sector. The ITUC reports that in 2012, seven workers were fired for trade union activities.

All unions must register with the authorities through a long and detailed procedure, as well as being obliged to comply with any request for reports or consultations coming from the authorities at any time. Company level unions must have at least twenty members, union committees thirty members and industrial unions must have a minimum of 300 members. Workers can only be a member of one trade union and must belong to the union of their own occupation. Additionally, trade union officers can only be chosen from amongst the union's members. Collective bargaining and strikes are allowed under the constitution and the Labour Code. However, strikes must be related to concrete employment issues and workers' industrial interests.

## **Decent work**

The law allows employers to hire workers on a permanent contract, a fixed term contract or for certain work. However, it is forbidden to employ a person on a fixed term contract if the tasks performed are of a permanent nature. Contracts may include a probation period of a maximum of 30 days in the case of domestic workers and unskilled workers or 60 days for skilled workers and apprentices; highly skilled technical workers may agree on a different length of their probation period with employers. According to articles 43 to 46 of the Labour Code, employment contracts must be in written, with a few exceptions. Individual employment contracts may be verbal for domestic service, accidental or temporary work being performed for less than 90 days, and for certain work whose value does not exceed the minimum wage. In all other cases,

employers are obliged to provide a written employment contract specifying at least the personal details of the employer and employee, date of commencement of employment, the type of work the employee will perform and the agreed salary.

If an employer or employees wishes to end the employment relationship formal notice has to be submitted. The notice period is 30 days for employees who have up to one year of service, 45 days for more than one and up to five years of service, 60 days for more than five and up to ten years of service and 90 days for employees with more than ten years of service. Workers are entitled to severance payment for each year they worked for an employer, if they were fired for reasons outside their responsibility. The severance pay amounts to one month's salary for workers who have completed their probation period and have up to five years of service, two months' pay for workers with more than five and up to ten years of service and three months for workers with more than ten years of service. Forced and bonded labour is prohibited under the Constitution as well as the Labour Code.

Under the Law 1860/50 on Establishment of Social Security, workers are entitled to pensions when they reach the age of 60 and have paid at least 1250 weeks (roughly 24 years) of pension contributions. Workers who have already paid 1500 weeks (29 years) of contributions and are over 55 years of age are entitled to early retirement. Workers who reached the age of 60 and have paid at least 750 weeks of contributions, are entitled to reduced pensions. The pension is calculated as 100% of the average earnings of the worker, but never less than 33% of the minimum wage. The pension for early retirement is 80% of average earnings, plus 4% for each year that the person is older than 55 (up to 59). If a worker who paid at least 750 weeks of contributions dies, 60% of their pension and disability entitlements will be distributed among the widow(er) above the age of 40 and children below the age of 18.

Under the Labour Code (art. 272-276), employers are obliged to take all precautionary measures in order to protect the life, safety and health of employees. Employers should provide protective clothing and equipment to workers for free and organise constant training of workers on health, safety and hygiene at work.

If workers have paid contributions for at least four months, they are covered by law 1860/50 on Establishment of Social Security. They are entitled to medical care and paid sick leave for the same disease for a maximum of 26 weeks, which can be extended by 24 weeks in special cases. During this period the worker should receive 50% of her average wages in the past four months. According to article 92 of the Labour Code, workers may not be dismissed while they are on sick leave. Insured workers will also be entitled to medical benefits, including general medical care, specialised care, medicine and hospitalisation.

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If a worker suffers a work related disability they are entitled to disability benefits. Workers with permanent disabilities should receive disability benefits equal to 30% to 100% of their average earnings in the last three years, depending on the extent of the disability. If the assessed degree of disability is greater than 30%, the worker receives 60% of the lost earnings; if the degree of disability is smaller than 30%, she will receive a lump sum of five years of pension payments. Workers with temporary disabilities should receive 75% of their average wages in the preceding four months for up to 52 weeks. If a worker dies due to a work related injury, her dependents are entitled to a survivors benefit. Widow(er)s aged 40 or over are entitled to 40% of the deceased workers' pension entitlements, orphans under the age of 16 have the right to 20%; yet the total sum of survivors' benefits may never exceed 100% of the deceased worker's entitlements. If no spouse or children are present, the benefits will be paid to the workers' parents. Insured workers who become disabled due to reasons unrelated to work and are assessed with a loss of at least 30% of their earnings capacity are entitled to invalidity benefits. These benefits amount to 50% of the worker's average earnings over the last three years, plus 1.5% for each 50 weeks of contributions exceeding 150 weeks, up to 100%.

## **Wage setting**

The government sets a minimum wage for each region, split into urban and rural areas, at the proposal of the tripartite National Minimum Wage Council. The National Minimum Wage Council is composed of three government representatives, three employers' and three workers' representatives. In its proposal for the minimum wage level, the tripartite council takes into account needs of workers and their families, cost of living, the level of wages and income in the country, economic development, productivity and other relevant provisions. The minimum wage is adjusted every two years or earlier if there is a variation of at least 10% in the cost of living or if there is a significant alteration in the conditions of a sector or industry due to economic-financial factors.

The minimum wage applies to all workers, with a few exceptions. Workers below the age of 18 may receive an initial salary of 60% of the minimum wage, but this must be accompanied by a progressive wage scale based on years effectively worked. For piece rate workers, the daily wage may not be lower than the minimum wage divided by 26. Apprentices cannot earn less than 60% of the minimum wage and domestic workers may not be paid less than 40% of the minimum wage in cash, while they are entitled to receive food and lodging. Other workers may not receive more than 30% of their wages in kind. They must be paid at

regular intervals and in legal tender on a weekly, fortnightly or monthly basis. Mentally or physically disabled persons are not covered by the minimum wage legislation.

The minimum wage provides a floor for the amount that workers should earn. Through collective bargaining, social partners can set higher wage levels, which will have legal effect when acknowledged and registered by the labour administrative authority. Collective agreements may not contain wages that are lower than the minimum wage. The labour inspectorate is in charge of ensuring compliance with the law and failure to pay the minimum wage by an employer may result in a fine amounting to 10 to 30 daily minimum salaries per affected worker, or more if the employer has been fined before.

## Working time

The maximum working time under the labour code is eight hours per day and 48 hours per week. The maximum working time is six hours per day and 36 hours per week for workers performing risky, unhealthy or continuous shift work and 7 hours for those performing work during night time, which are the hours between eight pm and 6 am. They may not work more than 42 hours per week if the work is done entirely during the night time, and not more than 45 hours when work is performed during both day and night time. For these night hours, workers should be paid 30% above their normal wage rate.

The labour code exempts some groups of the eight hours limit, allowing them to work up to 12 hours per day with a break of one and a half hours (art. 205). This exemption applies to managers, administrators and workers who are not subject to direct supervision, workers whose presence alone is required, employees who do not work on the employers' premises and those whose work by its nature is not subject to a regular schedule, like domestic workers. Adolescents between the age of 14 and 16 or those who still attending studies may not work for more than four hours per day and 24 hours per week, whereas youth between 16 and 18 may work no more than six hours per day and 36 hours per week.

Under article 206, employers should communicate working schedules by displaying a notice with starting and finishing hours as well as rest periods of each worker or group of workers in a conspicuous place. Workers have a right to a rest period of half an hour (art. 200), or one and a half hours for agricultural and domestic workers who work 12 hours per day (art. 205). Between two shifts or working days, workers should get at least ten consecutive hours of rest, or 12 if they are domestic servants.

Under article 213, workers furthermore have a right to one rest day per week, which is usually the Sunday, but can be another day if this is agreed between the employer and an adult employee. If workers wish

to start the weekend rest from Saturday noon onwards, they can agree with their employer to reschedule their working time to more than eight hours per day, without those hours counting as overtime (art. 215).

Workers have the right to a rest day on public holidays that are fixed by the state as compulsory rest days. If workers have worked with an employer for at least one consecutive year, they are entitled to paid annual leave. This leave is equal to 12 consecutive working days for workers with less than five years of tenure, 18 days for workers after 5 years but less than 10 years of consecutive service and 30 days for workers with more than 10 years of service. Workers doing tasks that are not performed on a continuous basis and piece rate workers qualify for annual leave if they have worked for at least 180 days in the last year or earned at least 180 salaries respectively; they are entitled to a number of annual leave days proportional to the number of days worked. The employer can schedule the dates of workers' annual leave period by communicating this at least 6 months before the worker is entitled to such leave and the leave should start on a Monday, or on the following day if the Monday is a public holiday. Article 220 states that payment of the annual leave should be made before the start of the leave. If an employer fails to communicate the date of the commencement of the leave, the employer should pay double the normal remuneration. Employers can only recall workers from annual leave in case of urgencies and workers have the right to return to their leave after finishing the urgency.

Adult workers may work up to three hours per day of overtime, as long as the total working week does not exceed 57 hours. For these over hours, workers should be paid 50% above the normal wage rate during day time and 100% above it for over hours during night time. Workers can be required to work on their rest day if the task to be performed is urgent and indispensable to avoid interruptions for the operations of the week or due to force majeure. In this case, the worker has the right to a compensatory rest day of 24 hours on another day in the following weeks. Work on a public holiday should be paid at twice the normal wage rate.

## **Non-discrimination**

The National Constitution specifically prohibits discrimination in employment on the basis of sex. Article 2 of the constitution guarantees women's access to land. The 2002 Agrarian Act lays out women's right to own and manage land, as well as seeking to enhance women's access to bank loans. The constitution protects women's equal civil, political, social, economic and cultural rights, while charging the state with the active obligation to protect and realise these rights. To this end, the Women's Secretariat of the Office of

the Presidency (SMPR) was established. In practice, however, women are still disadvantaged both socially and economically, and they face greater difficulties in accessing justice.

The Labour Code prescribes equal labour rights for women and men, including equal pay, maternity protection and the obligation to establish child care units. Article 9 of the Labour Code and article 88 of the Constitution forbid any discrimination on the basis of race, gender, colour, age, nationality, disability, religion, political opinion, social status and union activity. Article 229 of the Labour Code and article 92 of the Constitution establish the principle of equal remuneration for work of equal value, without any discrimination on the basis of gender, nationality, religion, social status, political opinion and union activity.

## Maternity and care

The Labour Code establishes the right to 12 weeks of maternity leave, 6 of which are to be taken before confinement and six after. The six weeks after confinement are compulsory. To receive maternity benefits, a female worker has to present a medical certificate issued by the Social Provident Institution for the Ministry of Public Health and Social Welfare, stating that she is expected to give birth in the next six weeks. Workers of the state that do not work in state and municipalities' undertakings which produce goods or render services, including police officers and armed forces, are not covered by the maternity provisions from the labour code and fall under special regulations.

Female workers, including self-employed, who have paid social security contributions for at least six weeks during the four months preceding the maternity leave, have the right to maternity benefits and medical assistance. The benefits are paid for three weeks before confinement and six weeks after and amount to 50% of the average earnings in the last four months. The maternity benefits are paid by the social security system, but if an employer has not paid contributions he or she shall be liable to pay the incurred costs of the maternity benefits to the social security system. The medical benefits are also covered by the social security system and include surgical and dental care, free medicine and hospital care.

During the pregnancy, women are not allowed to work night shifts if there is a risk to their health or that of the unborn child. From the date of notification of the pregnancy, female workers are also entitled to be transferred to another post without reduction in salary, if their current tasks entail a health risk to the worker or the unborn child. If a woman is unable to return to work after 12 weeks due to the pregnancy or confinement, the leave will be prolonged to allow for recovery. During this period she still retains her job and all rights acquired through the labour contract.

Women may not be dismissed by their employer from the moment of notification of the pregnancy and while enjoying maternity leave. They have the right to return to the same position after maternity leave. Under article 134 of the Labour Code, when a woman returns to work, she has a right to two extra breaks of half an hour per day for breastfeeding. These nursing breaks have to be counted as working time and are fully paid. Industrial and commercial enterprises employing more than fifty women are also obliged to provide nurseries for children under the age of two.

Under article 62, workers can ask for three days of paid leave in case of marriage, death of a spouse, children, parents, grandparents or siblings. Fathers can also get three days fully paid leave in case of the birth of a child.

### **Sexual harassment**

The penal code criminalises rape and sexual harassment and imposes prison sentences up to 13 years. Resolution No.472/12 in combination with article 133 of the penal code forbid any form of sexual harassment or intimidation by persons abusing the authority or influence of their function, which includes sexual harassment in employment. While the law forbids sexual harassment on these grounds and coerced sexual acts in any situation, it does not address sexual harassment in public spaces or service provision.

According to article 81 of the Labour Code an employer may terminate the contract of an employee guilty of sexual harassment and an employee who is a victim of sexual harassment may unilaterally terminate her employment contract.

## **3.9 Peru**

The Republic of Peru is an upper middle income country of nearly 30 million people in Western South America. It covers 1.2 million squared kilometres and borders on Ecuador, Colombia, Brazil, Bolivia and Chile. Life expectancy at birth is 73 years and 71% of women are in the labour force. Of its 11 million labour force, less than one per cent works in agriculture, 24% in industry and 76% in services. Peru declared its independence in 1821; it is a constitutional presidency with a unicameral parliament and a civil law system.

### **Fundamental workers' rights**

The right to freedom of association is enshrined in the constitution and law. Anti-union discrimination is forbidden, but since the Law on Productivity and Competitiveness allows employers to fire workers without reporting any reason, this protection is not guaranteed in practice. The ITUC reports that in 2012,

ten union activists were fired from their jobs. Various forms of flexible contracts do also exist, which makes it easy to refrain from renewing the contracts of unionised workers. Unions are obliged to have at least 20 or 50 members, which has acted as an impediment to the formation of unions in small and medium size enterprises. A further obstacle of organisation is that temporary and permanent employees have not been allowed to form common unions.

Collective bargaining is guaranteed by the constitution, but employees in the public administration are not allowed to negotiate wages. Strikes require the support of half plus one of the workers in a company in a vote overseen by a lawyer. The right to strike is further impaired by the need of the ministry's approval to organise a strike, as well as its authority to revoke the authorisation at will and to set the level of minimum services during the strike. Further legislation has granted police forces more authority to intervene peacefully or violently in crowds, which among other things makes striking a potentially dangerous activity.

## Decent work

The law allows employers to hire workers on a permanent contract, a fixed term contract or for certain work. Peruvian law offers more rights and security to employees on permanent contracts than to employees on temporary contracts, in reaction to which employers have started to endlessly prolong the latter instead of offering permanent contracts (Burt, 2011). Officially, however, it is forbidden to employ a person on a fixed term contract if the tasks performed are of a permanent nature. Contracts may include a probation period, which is normally a maximum of 3 months. It may be six months in the case of skilled workers and persons in a position of trust, or one year for managerial personnel. According to the Law on Labour Productivity and Competitiveness, wages may be paid in cash or in kind.

If an employer or employees wishes to end the employment relationship formal notice has to be submitted in written. The notice period is 6 days if an employee is fired for misconduct and 30 days if she is fired for lack of capacity to perform the work. Under articles 34 and 36 of the Labour Code, workers are only entitled to severance were they were arbitrarily, without following procedures. In such cases, severance pay amounts to one month's pay for each year of service up to a maximum of 12 months' pay. Forced and bonded labour are prohibited under article 23 of the Constitution, which states nobody may be forced to do work against their will.

Under the Law establishing the national system of social security pension, workers are entitled to pensions when they reach the age of 65 and have paid at least 20 years of pension contributions. Men who have already paid 30 years of contributions and are over 55 years of age and women who have paid contributions

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for at least 25 years and have reached the age of 50, are entitled to early retirement at a reduced rate. The calculation of the level of pension benefits depends on whether people were born before or after 1946. The pension for early retirement is reduced by 4% for each year that the person is younger than 65. If a worker who is entitled to pension benefits dies, their spouse aged 60 or over are entitled to 50% of the deceased workers' pension entitlements, orphans have the right to 20%, full orphans 40% and dependent parents to 20%; yet the total sum of survivors' benefits may never exceed 100% of the deceased worker's entitlements.

Under the Health and Safety Act at Work, employers are obliged to take all necessary measures in order to ensure the health and safety of workers in the performance of all aspects of work, in the workplace or in the course of it. Employers should provide protective clothing and equipment to workers for free and organise constant training of workers on health and safety at work. These provisions are inspected by the National Superintendency of Labour Inspection (SUNAFIL)

If workers are covered by the Law on Social Security Modernisation of Public Health they are entitled to sick leave and medical benefits. The first 20 days that an employee is ill, the costs are to be borne by the employer. After this period, the employee can apply for a subsidy from the social security office, which will amount to her daily average wages over the last four months and will be paid for a maximum of 18 months. According to the Law on Productivity and Labour Competitiveness, work contracts are suspended but not terminated while a worker is on sick leave, meaning the employer is not obliged to pay the respective wages but the employee does not lose employment. Insured workers will also be entitled to medical benefits, including medical and surgical care, hospitalisation, medicine, appliances and rehabilitation until full recovery or certification of permanent disability.

If a worker suffers a work related disability they are entitled to disability benefits. Workers with permanent disabilities should receive disability benefits equal to 80% of their average earnings, or a proportion of it depending on the extent of the disability. If the assessed degree of disability is smaller than 40%, she will receive a lump sum of two years of pension payments. After a waiting period of 20 days, workers with temporary disabilities should receive 100% of their covered earnings for up to 340 days. If a worker dies due to a work related injury, her dependents are entitled to a survivors benefit. Widow(er)s aged 60 or over are entitled to 50% of the deceased workers' pension entitlements, orphans have the right to 50% and dependent parents to 20%; yet the total sum of survivors' benefits may never exceed 100% of the deceased worker's entitlements.

Insured workers who become disabled due to reasons unrelated to work, are entitled to invalidity benefits if they are assessed with a loss of at least 66.7% of their earnings capacity, were employed at the moment of injury, paid at least 36 months of contributions in total and at least 18 months in the last 36 months. These benefits amount to 50% of the worker's average earnings over the last 12 months, plus 1% for each year that contributions exceed the required three years.

## Wage setting

The minimum wage for private sector workers is set by sector or occupation by the National Labour and Employment Promotion Council in consultation with workers' and employers' organisations. The Council is composed of government representatives, employers' and workers' representatives. In its considerations over the minimum wage level, the tripartite council takes into account needs of workers and their families, cost of living, economic development, productivity, capacity of employers to pay and the inflation rate. When no agreement is reached inside the council, the president fixes the minimum wages through an emergency decree.

The minimum wage applies to all private sector workers. Workers who do not work a full working week, should be paid at least the minimum wage in proportion to the number of hours worked. For agricultural workers a daily minimum wage exists, workers in mining are entitled to earnings at least 25% above the minimum wage and journalists to three times the minimum wage rate. The minimum wage of domestic workers is agreed between the parties, but employers must provide food en lodging that shall not be considered part of the wages. There is no law stating that wage must be paid at regular intervals, but workers may end an employment relationship if wages are not being paid.

The minimum wage provides a floor for the amount that workers should earn. Through collective bargaining, social partners can set other wage levels. The labour inspectorate is in charge of ensuring compliance with the law and failure to pay the minimum wage may by an employer may result in a fine.

## Working time

Under Legislative Decree No. 854 on Working Time and Overtime, the maximum legal working time is eight hours per day and 48 hours per week. Managers, employees who are not subject to direct supervision and those who perform intermittent work or security or custodial work are exempted from this limit, but domestic workers are included. Young workers between 12 and 14 may not work more than four hours per

day and 24 hours per week, whereas those between 15 and 17 not more than six hours per day and 36 hours per week.

Working times should be displayed by employers through a work schedule, which should be posted in a clearly visible place on the premises, detailing starting and ending times as well as break times. Workers have a right to a daily rest period of 45 minutes (art. 7), which is unpaid unless otherwise negotiated in the collective agreement. Workers furthermore have a right to one paid rest period of 24 hours per week, which is usually the Sunday. Work that is performed during the night time, between 10pm and 6am, should be paid at a 35% premium.

Workers have the right to a rest day on public holidays, which are usually 12 days that are fixed by the state as compulsory rest days. Furthermore, workers are entitled to paid annual leave of 30 days if they have worked for an employer for one year. The annual leave should in principle be taken up as one uninterrupted period, but employees can request permission from their employer to take the leave in shorter period of at least seven days, or to receive part or all of the leave in extra wages instead of in rest days. Domestic workers are entitled to 15 days of annual leave after having worked for an employer for one year continuously.

Adult workers may work overtime, which is a voluntary option. Workers cannot be forced to work over hours except in cases of force majeure that imply imminent danger to people (art. 9 Decree on Working Time and Overtime). Workers who work overtime should either be paid at a higher wage rate, or employer and employee may agree that overtime is compensated by an equal amount of additional rest time. The wage should be 25% higher during the first two hours of overtime and 35% during the subsequent hours; when overtime was illegally imposed, a worker has a right to a 100% higher wage rate. If employees work on a public holiday, they are entitled to a compensatory holiday with full pay or twice the normal wage rate, whereas domestic workers should be paid 50% above the normal wage rate.

## **Non-discrimination**

The constitution forbids any discrimination on the basis of race, gender, ethnicity, marital status, social status, language, disability or union activity. Law 728 prohibits any form of gender based discrimination and reads that any dismissals on discriminatory grounds are void. Legal protection exist for pregnant women as well as specifically on the issue of equal pay.

In 2007, Peru adopted the Equal Opportunity Act, under which the state is obliged to facilitate equal opportunities in the workplace, equal pay for equal work and equal access to employment, training and working conditions. Wages may not be lower for women, as the Equal Opportunities Act Between Women

and Men establishes the principle of equal remuneration for work of equal value without discrimination on the basis of sex. There are no sectors from which women are barred, although limitations may exist for pregnant women.

## Maternity and care

Women have the right to 90 days of maternity leave, half of which are taken before confinement and the other half after. The 45 days after confinement are compulsory, but the prenatal days can be deferred and added to the postnatal leave if a medical certificate is provided stating that this will not affect the health of mother or child. In cases of multiple birth a woman can get 30 additional days of leave and if the confinement takes place later than expected, the intervening days should be considered as sick leave for temporary illness (Act on the Extent of the Right to Prenatal and Postnatal Leave for Pregnant Workers).

Under the Act Granting Leave from Work for Adoption, workers who adopt a child under the age of 12 have the right to 30 days of adoption leave, which should be taken up by the woman if the adopting couple are married. Under article 2 of Law No. 29409, fathers can ask for four days of paid paternity leave upon the birth of a child.

According to the Act Modernising Social Security for Health, female workers, including self-employed, who have paid social security contributions for at least three consecutive months or four non-consecutive months during the half a year preceding the maternity leave, have the right to maternity benefits and medical assistance. The benefits are paid by the social security system for the 90 days of the maternity leave and an additional 30 days in case of multiple birth. Benefits are set at 100% of the average daily wage in the 12 months preceding the start of the benefit. The medical benefits are also covered by the social security system and include care in the postnatal period and for new-born babies.

During the pregnancy, women are not allowed to perform any task that constitutes a risk to their health or that of the unborn child. If their current tasks entail a health risk to the worker or the unborn child, she could be temporarily transferred to another post. Women may not be dismissed by their employer from the moment of notification of the pregnancy or within 90 days after delivery. However, there is no provision in the law that guarantees the right of a woman to return to the same position after pregnancy leave. When a woman returns to work, she has a right to an extra break of one hour per day for breastfeeding, or one more hour in case of multiple birth. These nursing breaks have to be counted as working time and are fully paid.

## Sexual harassment

The law stipulates punishments for both rape and spousal rape, and legislation is generally applied. The Law on Prevention and Punishment of Sexual Harassment prohibits sexual harassment in the workplace, but considers it a labour rights violation rather than a criminal offence. According to the law an employee who is a victim of sexual harassment may unilaterally terminate her employment contract and is entitled to compensatory payment if the perpetrator was the owner, employer or administrator. It is the ministry of labour that is in charge of monitoring compliance with the law against sexual harassment.

### 3.10 South Africa

The Republic of South Africa is located in the southern tip of Africa. It borders Botswana, Lesotho, Mozambique, Namibia, Swaziland and Zimbabwe and covers 1.2 million squared kilometres. South Africa has a population of 51 million and a labour force of 18 million. Nine per cent of people work in agriculture, 26% in industry and 65% in services; 48% of women are in the labour force and life expectancy at birth is 49 years.

While the independent Union of South Africa was established in 1910 and the Republic of South Africa came into existence in 1961, the actual independence date of the country is considered to be in 1994. In this year majority rule was instated and the discriminatory apartheid policy ended. South Africa is a republic with a bicameral Parliament and a mixed legal system, containing elements of Roman-Dutch civil law, British common law and customary laws.

#### Fundamental workers' rights

The constitution and law guarantee the right to freedom of association. All workers, except those in the national intelligence agency and secret service, are protected from anti-union discrimination and have the possibility of legal redress. Collective bargaining is allowed on all levels, although sectoral agreements are most common. Strikes are allowed, however, employers can hire a replacement crew if they institute a lock-out *after* the start of a strike.

Freedom House downgraded South Africa's rating on freedom of association following violent clashes between the police and the striking mine workers in 2012<sup>4</sup>. The ITUC also reports that in 2012, forty-six unionists were arrested, eleven were injured and eighty-five were dismissed.

4 Puddington, A. (2013). Freedom in the world 2013: democratic breakthroughs in the balance, Freedom House, p. 7. <http://www.freedomhouse.org/report/freedom-world/freedom-world-2013>

## Decent work

The Basic Conditions of Employment Act allows employers to hire workers on a definite or indefinite basis. However, it is forbidden to employ a person on a fixed term contract if the tasks performed are of a permanent nature. Employment contracts may be written or verbal, but the Act does require employer to provide employees with a written statement of particulars, including information on pay, the work schedule and leave, as well as notice requirements. Contracts may include a probation period, but the law does not specify a maximum period. There is only a good practice code suggesting probationary periods should be of reasonable duration and stipulated in the employment contract.

If an employer or employee wishes to end the employment relationship formal notice has to be submitted. Employers can terminate an employment contract for any fair reason, which is defined as worker's misconduct, poor work performance, employer's operational requirements and health injury leading to incapacity for work. The notice period is one week for employees who have been employed for four weeks or less, two weeks for those who have been employed more than four weeks but less than a year and four weeks of notice are required in cases of workers who have been employed for one year or more. Under article 41 retrenched workers, that is workers who were fired for operational requirements or due to insolvency, are entitled to severance pay. In such cases, severance pay amounts to one week's pay for each year of service. Under the Unemployment Insurance Act, workers are entitled to unemployment benefits for up to 34 weeks if they apply for the benefit within six months after becoming unemployed. Forced labour is prohibited under article 13 of the Constitution and article 48 of the Basic Employment Conditions Act.

Under the Occupational Health and Safety Act, employers are obliged to provide and maintain a working environment that is safe and without risk to the health of the employees. Employers should provide protective clothing and equipment to workers where risks cannot otherwise be mitigated. They are required to ensure workers have been provided with all information, training and supervision that is necessary for a safe and healthy work environment. These provisions are inspected by the Labour Inspectorate.

If workers are covered by the Basic Conditions of Employment Act, they are entitled to sick leave. During the first six months of employment, workers are entitled to one day of paid sick leave for every 26 days that they worked. Subsequently, during a three year period workers are entitled to a number of sick days equivalent to the number of days that they would usually work in a six week period; this amounts to 36 days of paid sick leave for employees who work six days per week and 30 days for those on a five-day

working week. After this period, workers are entitled to a maximum of 26 weeks of medical benefits at 45% of their regular wages.

If a worker suffers a work related disability they are entitled to disability benefits. Workers with permanent disabilities should receive disability benefits equal to 75% of their earnings, or a proportion of it depending on the extent of the disability. If the assessed degree of disability is smaller than 30%, she will receive a lump sum of 15 times her average monthly earnings. Workers with temporary disabilities should receive 75% of their monthly average earnings for up to 12 months, which can be extended to 24 months in special cases. If a worker dies due to a work related injury, her dependents may be entitled to a survivors benefit. Widow(er)s who are permanently disabled are entitled to 40% of their deceased spouse's disability benefit; unmarried orphans under the age of 18 or children with disabilities of any age are entitled to 20% of the benefit. Residents of South Africa over the age of 60 are entitled to a means tested old age grant. Under the Unemployment Insurance Act, people who become permanently disabled due to an injury that is unrelated to their work, are entitled to a means tested disability benefit.

## Wage setting

The Minister of Labour sets minimum wages by sector following the recommendation by the Employment Conditions Commission. The Employment Conditions Commission is composed of one employers' and one workers' representatives, government representatives and three independent persons, who are appointed by the Minister of Labour in consultation with the National Economic Development and Labour Council. The sectoral Employment Conditions Commissions make their recommendations of the minimum wage rate following investigations into conditions of employment in the sector and area that will be affected by the sectoral determination. In their considerations over the minimum wage level, the commissions takes into account needs of workers and their families, cost of living, the level of wages and incomes in the country, economic development, capacity of employers to pay and any other relevant provisions.

The minimum wage level may vary across sector as well as within sectors per region or occupation. The sectoral determinations that fix the minimum wage may include clauses regarding the coverage of specific groups of employees. Managers are regularly excluded from the scope of the determinations and trainees regularly fall under lower minimum wage rates. Independent contractors and members of the National Defence Force, National Intelligence Agency and the Secret Service are excluded from the scope of the Basic Conditions of Employment Act and therefore from the minimum wage determinations. Sectoral determinations may not apply to workers already bound by a collective agreement concluded within the bargaining

council and domestic workers are covered by specific minimum wage rates.

The Minister of Labour, in consultation with the National Economic Development and Labour Council and the Employment Conditions Commissions also determined which in-kind payments are to be considered a part of the employee's wage and may cap the allowed share of wages to be paid in kind. Minimum wage rates may be set per hour, week or per month and are commonly fixed for the next three years. An employer may pay wages on a daily, weekly, fortnightly or monthly basis; wages do have to be paid on a regular basis and no more than seven days after the completion of the wage period (art. 32).

The minimum wage provides a floor for the amount that workers should earn. Through collective bargaining, social partners can set higher wage levels. However, once above the minimum wage level, there is no provision in the law that forbids unequal payment for work of the same value. The labour inspectorate is in charge of ensuring compliance with the law. Labour inspectors may advise employers and employees of their rights and obligations, conduct workplace inspections, investigate complaints, issue compliance orders or initiate cases before the Labour Court. Failure to pay the minimum wage by an employer may result in a fine, which increases if the employer has been found guilty of the same offence before.

## Working time

Under the Basic Conditions of Employment Act, the maximum legal working time is nine hours per day for employees who work five or fewer days per week and eight hours per day for those who work more than five days per week. The maximum working time per week is 45 hours. The Basic Conditions of Employment Act covers all employees, including domestic workers, except those who work fewer than 24 hours per month. The limits do not apply in cases where tasks need to be performed without delay that could not have been foreseen by the employer and cannot be performed during normal working hours. Article 12 of the Act also allows ordinary working hours to be averaged out over a maximum period of four months if this is provided for in a collective agreement. There are possibilities for employers and employees to agree to compress the working week by increasing the working day to a maximum of 12 hours, including breaks, while keeping the working week at a maximum of 45 hours.

The Act says that night work, which is work performed between six pm and six am, should be limited, but it does not impose a concrete cap. Article 17 states that workers may only be permitted or required to work during the night time if the employee is compensated by the payment of an allowance, which may be a shift allowance or a reduction of working hours, and transportation to and from their place of residence is provided. If an employee is required to work between the hours of 23:00 and 06:00 at least five times per

month or 50 times per year, an employer must inform the employee of the health hazard, enable medical checks and transfer the employee to suitable day work if health complications arise.

Workers who work continuously for more than five hours have a right to a daily meal interval of one hour (art. 14), which is unpaid unless the employee has to be available for work during her break. The worker should also be paid for any part of the meal break that is in excess of 75 minutes, unless they live on the premises where the workplace is situated. Under article 15, a worker has a right to 12 consecutive hours of rest between the ending of one working day and the start of the next. An exception is made for employees who live on the premises of the workplace, who may agree in written to 10 hours of daily rest if their meal interval is at least three hours. Workers furthermore have a right to a weekly rest period of 36 hours per week, which in principle must include the Sunday, unless otherwise agreed. By written agreement, the rest period may also be exchanged for 60 hours of rest every two weeks or reduced by eight hours in one week if it is extended by the same amount of hours in the next week.

Workers have the right to a paid rest day on public holidays, which are usually 12 days that are fixed by the state as compulsory rest days. Whenever a public holiday falls on a Sunday, the following Monday shall be a public holiday. Furthermore, workers are entitled to paid annual leave of 21 days. Alternatively, by agreement an employer can grant one day of annual leave per 17 days the employee worked or was entitled to be paid, or one hour of leave per 17 hours the employee worked or was entitled to be paid. The number of days of consecutive leave may also be reduced by the number of days of paid occasional leave that an employee has taken up at their own request. The starting and ending dates of the annual leave can be scheduled by the employer or in agreement between employer and employee, but it must not be granted more than six months after the end of the leave cycle. The leave pay should be paid before the start of the leave or, by agreement, at the regular pay day.

Adult workers may work overtime up to a maximum of 10 hours per week and as long as any working day does not exceed 12 hours. The maximum overtime limit may be increased to 15 hours per week in collective agreements. Workers who work overtime should be paid 50% above their normal wage rate. Alternatively, an employer and employee may agree in writing to increase the working day to 12 hours and either pay the overtime rate for overtime hours plus 30 minutes of paid rest time for each hour of working time, or to pay the normal wage rate and grant 90 minutes of paid rest time for each hour of overtime work. The compensatory rest time must be given within one month, or within 12 months if an agreement is reached to extend this period.

Employees who work on a Sunday should be paid at a 50% premium if they ordinarily work on Sunday or at twice the normal rate if they do not ordinarily work on Sundays. Additionally, on Sundays the employee should not be paid less than their normal daily wage, irrespective of the number of hours they worked. If employees work on a public holiday, which falls on a day that they would ordinarily work, they are entitled to double their normal wage rate or their normal daily wage plus the amount earned for the actual time worked on that day, whichever is greater. If employees work on a public holiday, which falls on a day that they would not ordinarily work, they are entitled to their normal daily wage plus the amount earned for the actual time worked on that day.

## **Non-discrimination**

The constitution guarantees gender equality, forbidding discrimination by the state or its citizens, and obligates the state to put forward gender equality legislation. Under the law, women can work in all sectors of the economy, they can pursue a trade or career, sign contracts and open bank accounts in the same way as men.

Article six of the Employment Equity Act, article eight of the Promotion of Equality Act and article four of the Code of Good Practice Pregnancy all forbid both direct and indirect discrimination in employment policy or practice on the grounds to race, gender, sex, pregnancy and family responsibility. Women returning from pregnancy leave have the right to return to their previous job. There is, however, no specific legislation forbidding unequal payment for work of equal value, forbidding discrimination in hiring or preventing employers from asking about family status in a job interview.

## **Maternity and care**

Women who work at least 24 hours per month for their employer have the right to four months of maternity leave, six weeks of which are taken after confinement and constitute compulsory leave. Women who have a miscarriage in the third trimester or in the event of a stillbirth, also have the right to six weeks of leave.

Under the Unemployment Insurance Act, female workers covered by the Basic Conditions of Employment Act and who have paid social security contributions for at least 13 weeks during the 52 weeks preceding the maternity leave, have the right to maternity benefits for a maximum of four months, or six weeks in the event of a miscarriage or stillbirth. Women who have paid contributions for at least 18 weeks during the last 52 have the right to receive maternity benefits if they adopt a child. The benefits are paid through

the unemployment insurance fund and benefits amount to up to 60% of the remuneration of lower income contributors, or less for higher income contributors.

During the pregnancy or up to six months after the birth of a child, if it is practical to do so, employers should offer suitable alternative employment to women who work night shifts or perform tasks that constitute a danger to her health or that of the child (art. 26 of the Basic Conditions of Employment Act). Under the Code of Good Practice Pregnancy, employers should also make arrangements for pregnant and breast feeding employees to attend antenatal and postnatal clinics for health checks. The pregnant worker should, at the notification of the pregnancy, be subject of an examination of her physical condition by a qualified medical professional and the workplace risks should be re-evaluated. There is no law guaranteeing the right to breastfeeding breaks, but the Code of Good Practice Pregnancy requires the arrangement of two extra 30 minute breaks for breastfeeding women during the first half a year after delivery.

The Employment Equity Act protects women from pregnancy related discrimination. It states that dismissal on the basis of pregnancy, intended pregnancy or any reason related to pregnancy is automatically unfair and the burden of proof shall lie on the side of the accused employer. The definition of dismissal in the Act includes a refusal to allow an employee to resume work after she has taken the statutory pregnancy leave according to the law, collective agreement or employment contract; or after she has been absent from work for up to four weeks before the expected date and up to eight weeks after the actual date of delivery.

Under article 27 of the Basic Conditions of Employment Act, a worker who has been employed for longer than four months and works at least four days per week, can ask for three days of paid family leave per year when a child is born, a child is sick, the spouse or life partner dies or when a parent, grandparent, sibling or child dies.

## Sexual harassment

The law prohibits rape, spousal rape and sexual harassment and women's shelters exist. While the occurrence of sexual harassment and sexual violence is widespread, the impact of legislation is very limited and judges often give light sentences. No government office has been appointed to addressing sexual harassment.

Under the Protection from Harassment Act and the Employment Equity Act, sexual harassment in the workplace is forbidden. However, its enforcement is left to employers, who may at most dismiss the perpetrator. Victims may press charges in a civil action suit or through criminal prosecution and there are NGOs

that help women do so. There are no specific clauses in the law addressing sexual harassment in education, in public spaces, in service provision or by persons in authority.

### 3.11 Tanzania

The United Republic of Tanzania is an East African low income country covering 947,000 square kilometres. Its neighbours are Burundi, the Democratic Republic of the Congo, Kenya, Malawi, Mozambique, Rwanda, Uganda and Zambia. Its population numbers 48 million and life expectancy at birth is 61 years. In 2006, 77% of Tanzania's 25 million labour force worked in agriculture, 4% in industry and 19% in services; 90% of women are in the labour force.

After gaining independence, the two former British colonies Tanganyika and Zanzibar formed the independent state of Tanzania in 1964. Tanzania is a republic with a unicameral Parliament and a common law system.

#### Fundamental workers' rights

The right to freedom of association is guaranteed in the constitution and anti-union discrimination is forbidden, except in Zanzibar. Article 20 of the constitution provides for freedom of association and article 9 of the Employment and Labour Relations Act allows workers to establish trade unions. Unions are obliged to register with the authorities within half a year of being established, for which public sector unions need a minimum of 20 members, 30 members in the private sector and 50 members in Zanzibar. Trade unions may employ only one full-time union leader, whereas all other board members must be employed full-time in the company or sector whose workers the union represents. The registrar has the right to suspend unions in the interest of public security or order.

In the private sector, collective bargaining is allowed under articles 66-74 of the Employment and Labour Relations Act. A copy of each collective agreement is to be sent to the labour commissioner. Strikes are officially allowed after a thirty day mediation period, but in practice often forbidden. Residents of Zanzibar and public service workers are excluded from the right to strike. Strikes are also forbidden in case they "endanger the life and health of the population", which is increasingly interpreted so as to include any disruption of people's lives. Picketing is forbidden..

## Decent work

The Employment and Labour Relations Act allows employers to hire workers on a definite or indefinite basis. However, it is forbidden to employ a person on a fixed term contract if the tasks performed are of a permanent nature. The Act requires employers to provide employees with a written statement of particulars at the start of the employment period. There is no official probation period, but the law does not allow employees who have worked for an employer for less than half a year to bring unfair dismissal claims against their employers, effectively instating a probation period in all contracts.

If an employer or employee wishes to end the employment relationship formal notice has to be submitted. The notice period is seven days for employees who are in their first month of employment. Afterwards, the notice period is four days for workers employed on a daily basis and 28 days for workers employed on a monthly basis. Longer notice periods may be agreed upon, as long as they are equal for employers and employees. Workers who were dismissed may have the right to severance pay of seven days of basic wage per year of service. Workers do not have a right to severance pay if they were fired for reasons of misconduct, incapacity and incompatibility with the requirements of the business. After serving due notice, a worker has the right to quit her job under article 41 of the Employment and Labour Relations Act. Both the Act and the Constitution forbid any form of forced or bonded labour.

Under the Occupational Health and Safety Act, employers are obliged to provide for the health, safety and welfare of all employees and ensure rehabilitation of affected employees. Employers should provide workers with all information and training necessary to safely handle any tasks they are supposed to do, as well as any article or substance they are to produce, process or transport and any machinery that are supposed to operate. In cases where toxic materials or substances are produced, handled or stored, employers may be obliged by the Chief Inspector to install bathing facilities, provide protective clothing and arrange regular medical checks. These provisions are inspected by the Labour Inspectorate, which is based in the provinces and on the central level split into two independent systems in mainland Tanzania and Zanzibar.

If workers are covered by the Employment and Labour Relations Act, they are entitled to sick leave up to a maximum of 126 days per leave cycle of 36 months. Workers are entitled to their full pay during the first 63 days and to half of their wages during the second 63 days. In accordance with article 102 of the Occupational Health and Safety Act, workers cannot be dismissed while on sick leave. However, after the expiration of the sick leave, employers are allowed to terminate the contract of employees who are unable to return to

work. Insured workers are also entitled to medical benefits, including general medical care, specialist care, medicine, hospitalisation and transportation.

If a worker suffers a work related disability she is entitled to disability benefits. Workers with permanent disabilities should receive disability benefits equal to 70% of their earnings for a total period of seven years. In the case of a partial disability, the worker receives a proportion of it depending on the extent of the disability. If the assessed degree of disability is smaller than 30%, she will receive a lump sum payment. The maximum partial disability benefit is 84 times her average monthly earnings. Workers with temporary disabilities should receive 60% of their monthly average earnings for up to 26 weeks. If a worker dies due to a work related injury, her dependents may be entitled to a survivors benefit. The survivors are paid a pension of 60% of the deceased worker's average insurable monthly earnings and may be eligible for a death benefit of up to 300,000 Shillings.

Workers who become disabled due to an injury that is not work related, are entitled to invalidity benefits. The monthly benefits are equal to 30% of the worker's monthly earnings in the best five of the last ten years, plus 1% of the average monthly earnings for each 12 month period that the worker paid contributions exceeding 15 years. A lump sum of 24 times the monthly benefit is paid in the first month, after with the worker receives only the monthly grant. The minimum benefit is 80% of the legal monthly minimum wage.

Under the National Social Security Fund Act, workers are entitled to pensions when they reach the age of 60 and have paid at least 180 months (15 years) of pension contributions. Men who are over 55 years of age and women who have reached the age of 50, may be entitled to early retirement at a reduced rate. The monthly pension is calculated at 30% of the worker's monthly earnings in the best five of the last ten years, plus 1.5% of the average monthly earnings for each 12 month period that the worker paid contributions exceeding the required 15 years. At retirement, a lump sum of 24 times the monthly pension is paid, after with retirees receive only the monthly grant. The minimum pension is 80% of the legal monthly minimum wage. Workers who do not qualify for either full or reduced pensions, are entitled to an old-age grant.

If a worker who is entitled to pension benefits dies, their spouse are entitled to survivors benefits. If the deceased worker has no dependent children, the widow or widower receives a 100% of their pension. This is paid for no more than two years in case the widow(er) is under 45 years of age or does not have children under the age of 15 at the time of the worker's death. If the deceased worker has dependent children, their spouse receives 40% of the benefits and the remaining 60% are divided between the dependent children. If the deceased worker has no spouse, the dependent children under 18, or under 21 if they are still in full time

education, divide 100% of the pension benefits. Survivor's pensions are payable for life or until marriage in the case of a widow(er) over the age of 45.

## Wage setting

The Minister of Labour may decide to impose a minimum wage for a sector or area. In such cases, the minister appoints a minimum wage board to investigate the remuneration and conditions of employment in such a sector or area. In the course of their investigation, wage boards may question individuals, request documents, conduct public hearings and facilitate negotiations between registered trade unions, employers and registered employee associations in the sector. In their considerations over the minimum wage level, the wage boards furthermore take into account needs of workers and their families, cost of living, the level of wages and incomes in the country, economic development, capacity of employers to pay and any other relevant provisions.

The wage board, composed of a chair person, one employers' and one workers' representative, then reports on its findings and makes a minimum wage recommendation to the minister. If registered trade unions, employees' associations and employers have reached an agreement over the minimum wage during the negotiations facilitated by the wage board and the parties to the negotiations are sufficiently representative of the sector or area, the wage board shall recommend to the minister that the agreement reached between the social partners be extended to the entire sector. At receiving the recommendation, the minister may issue a wage order to set the minimum wage or may refer the report back to the wage board pointing out the issues on which the minister disagrees. If the minister does not make a wage order within 60 days of receipt of the recommendation or if the minister does not make a wage order based on the recommendation, the report of the wage board should be forwarded to the National Assembly with attached reasons for not making the order.

The minimum wage level may vary across sector as well as within sectors. The wage order may apply to all or a group of employees and regularly specifies minimum conditions for trainees, contractors and piece-rate workers. Currently, minimum wages exist for health services, agricultural services, commerce, industry and trading, transport and communication, mining, marine and fishing, domestic services, hotels and private security. Under the Regulations of Wages and Terms of Employment Order, domestic workers who live and share food and services with their employers, may have up to 68% of their wage reduced as payment for the provided services. Non-domestic workers must be paid at regular intervals at the end of the contract period and in cash, unless the minister authorises payment in kind.

The minimum wage provides a floor for the amount that workers should earn. Through collective bargaining, social partners can set higher wage levels. The labour inspectorate is in charge of ensuring compliance with the law. Labour inspectors may conduct interviews and request documents, issue compliance orders or institute proceedings before the Resident's or District Court. Failure to pay the minimum wage by an employer may result in a fine, which will be no more than one million Shillings. Workers who have been paid below the minimum wage, may also apply to the District Court of Resident Magistrate's Court to recover the amount by which they were underpaid.

## Working time

Under the Employment and Labour Relations Act, the maximum legal working time is nine hours per day and 45 hours in six days per week. The limits do not apply to employees who manage other employees or who report directly to a senior management employee, or in cases of an emergency requiring work that cannot be performed during normal working hours. Under article 21, the working week can be compressed if employer and employee agree in written, in which case a working day of up to 12 hours is allowed without being considered overtime, as long as the working week does not exceed 5 days and 45 hours. Article 22 of the Act also allows ordinary working hours to be averaged out over a maximum period of one year if this is provided for in a collective agreement. In such cases the average ordinary working hours may not exceed 40 hours per week. Working times should be included in the employment contract and if an employer wishes to change the hours of work this must be communicated in written.

Workers who work continuously for more than five hours have a right to a daily meal interval of one hour (art. 23). Employers may only require an employee to work during their break if the work cannot be left unattended or cannot be performed by another employee. Under article 24, a worker has a right to 12 consecutive hours of rest between the ending of one working day and the start of the next. The daily rest may be reduced to eight hours if there is a written agreement to do so, an employee lives on the premises of the workplace or if the worker's meal interval is at least three hours. Workers furthermore have a right to a weekly rest period of 24 hours per week. By written agreement, the rest period may also be exchanged for 60 hours of rest every two weeks or reduced by eight hours in one week if it is extended by the same amount of hours in the next week.

Workers have the right to a rest day on public holidays, which are usually 11 days that are fixed by the state as compulsory rest days. Furthermore, workers are entitled to paid annual leave of 28 consecutive days, inclusive of any public holidays that may fall within this period, if they have worked for an employer for six

consecutive months. Employees who have worked for an employer for less than six months are not entitled to annual leave, unless they perform seasonal work or have worked for the same employer before and have worked for this employers for at least six months during the last year. The number of days of consecutive leave may be reduced by the number of days of paid occasional leave that an employee has taken up at their own request. The starting and ending dates of the annual leave can be scheduled by the employer, but it must not be granted more than six months after the end of the leave cycle or more than 12 months after the end of the leave cycle if the employee has consented to this and the extension is justified by the operational requirements of the employer.

Adult workers may work overtime up to a maximum of 50 hours per month and as long as any working day does not exceed 12 hours. Overtime is subject to agreement by the employees herself. Employees on 12 hour working days may not work more than ten hours of overtime per week. Workers who work overtime should be paid 50% above their normal wage rate, except if they manage other employees or report directly to a senior management member. Employees who work on a weekly rest day should be paid at twice the normal wage rate. If employees work on a public holiday, they are entitled to twice their normal daily wage rate.

Adult workers may also work during night time, which is between 20:00 and 06:00, for which they should be paid 5% above their normal wage rate. If the working hours during the night time are overtime, the 5% premium is added on top of the normal overtime premium. Night work is forbidden for employees who are below 18 years of age, who are medically certified as unfit for night work or who are expected to give birth within two months or have given birth in the last two months

## Non-discrimination

Article 13 of the Constitution forbids discrimination on the grounds of sex. The article reads that all human beings are born equal and are equal before the law. Discriminatory laws persist, however, especially in the field of family law. A further impediment to women's equality before the law is that Tanzania's judicial authorities may take into account both customary and Sharia law. There are, however, no industries from which women are barred altogether. Non-pregnant women can work in all industries without restrictions and may work night hours.

Under article seven of the Employment and Labour Relations Act, employers are obliged to ensure the promotion of equal opportunities in employment and to strive to eliminate discrimination in any employment policy or practice. This clause can be interpreted to include equal pay for work of equal value. Article 7 of the Employment and Labour Relations Act requires that employers pay equal wages for work of equal

value, regardless of sex. The article specifically forbids both direct and indirect discrimination on several grounds, including sex, gender, pregnancy, marital status and family responsibility. There are laws against the dismissal of pregnant women, as well as against discrimination in hiring; there is, however, no law preventing employers from asking women about their family status during a job interview.

## Maternity and care

Maternity leave is regulated under the Employment and Labour Relations Act; its maternity provisions apply to all women in mainland Tanzania, excluding those in the Peoples Defence Forces, Police Force, Prison Service or National Service. To qualify for maternity leave, women must give notice of their intention to take up maternity leave at least three months before the expected date of birth and present a medical certificate. They also must have worked for the same employer for at least six months, except in the case that they are seasonal workers, and may only take up maternity leave once per 36 month leave cycle and for a maximum of four children. Under article 33, women who qualify have the right to 84 days of maternity leave, six weeks of which are taken after confinement and constitute compulsory leave. In cases of multiple birth, this leave is extended to 100 days. The leave may also start earlier in case a medical professional certifies that this is necessary for the health of the woman or her child.

During the full 84 or 100 days of the leave, women are entitled to maternity benefits at 100% of their normal wages, paid by the employer. Maternity benefits can also be financed through the National Social Security Fund Act if an employee has made at least 36 monthly contributions, of which at least 12 contributions were made in the last 36 months. The employee may not have claimed maternity benefits in the last three years, unless the child died within the first year after birth. The maternity benefit is limited to one month in the case of a stillbirth. If a woman qualifies for maternity leave under the National Social Security Act, she is entitled to prenatal and postnatal medical care.

Pregnant women may not be required to perform work that is hazardous to the health of the mother or the unborn child. Under article 33 of the Employment and Labour Relations Act, if practical, an employer should provide a pregnant worker performing such tasks with suitable alternative employment on terms and conditions that are no less favourable than her current terms. During the last two months of the pregnancy or up to two months after the birth of a child, women may not work during night time. Employers should allow employees breastfeeding a child up to two hours of daily breaks during working time to feed the child.

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Employees who have worked for an employer for at least six months are entitled to four days of paid family leave during each 36 month leave cycle, in the case of illness or death of a child or the death of the worker's spouse, parent, grandparent, grandchild or sibling. In case of the birth of a child, a male employee who is the father of the child can take up three days of paid paternity leave per leave cycle (36 months) if he takes the leave within six days of the birth of the child and has worked for the same employer for at least six months or is employed on a seasonal basis.

The Employment and Labour Relations Act protects women from pregnancy related discrimination. Article 37 states that dismissal on the basis of pregnancy is automatically unfair and the burden of proof shall lie on the side of the accused employer. Article 33 furthermore specifies that after the end of her maternity leave, a worker should be allowed to resume employment on the same terms and conditions of employment as before the leave.

## Sexual harassment

Tanzania has laws against sexual violence and sexual harassment. In 1998, the Government passed a law on sexual assault, which addresses both rape and incest. The law also criminalises spousal rape, but only when the couple is legally separated. Under article 7 of the Employment and Labour Relations Act, sexual harassment is considered a form of discrimination and is prohibited. Sexual harassment is also forbidden in the penal code and may be punishable by prison sentence, a fine or compensation to the victim.

## 3.12 Uganda

The Republic of Uganda is a low income country in East Central Africa, covering 241,000 square kilometres between the Democratic Republic of the Congo, Kenya, Rwanda, South Sudan and Tanzania. Uganda has a population of 35 million people and a labour force of 17 million; 77% of women are in the labour force. Of its workers 66% work in agriculture, 6% in industry and 28% in services. Life expectancy at birth is 54 years.

After independence in 1962, the country went through an extended period of dictatorship, achieving relative stability in the late 1980s and transitioning to a multiparty democracy in 2005. Uganda is a republic with a unicameral Parliament and a mixed legal system of English common law and customary law.

## Fundamental workers' rights

The right to freedom of association is guaranteed in the constitution, articles 29 and 40. Section three of the 2006 Labour Unions Act establishes the right of workers to form unions and of all workers to participate in union activities. The Labour Unions Act also outlaws anti-union discrimination and criminalises any obstruction to organising from the side of employers. The Act allows labour unions to register without needing authorisation from the government, but this right is not upheld in practice. Applications to register trade unions are commonly refused, employers fire union members and activists, and police violence during strikes occurs.

Section three of the Labour Unions Act guarantees the right to collective bargaining and specifies the Industrial Court as the addressee in cases of industrial conflicts. Strikes are strictly regulated and are subject to a 30 day mediation period. The Labour Disputes Act (section 27), however, gives the ministry of labour the power to refer disputes to the Industrial Court on its own accord.

## Decent work

The Employment Act allows employers to hire workers on a definite or indefinite basis. The Act requires employers to provide employees with a written contract as well as a statement of particulars within 12 weeks of the start of the employment period. Under article 67, contracts may include a probation period of six months, which may be extended for a further period not exceeding six months.

If an employer or employee wishes to end the employment relationship formal notice has to be submitted. The employee may be terminated after serving due notice or payment instead of notice. The notice period is seven days for employees who are in their first month of employment. Afterwards, the notice period is two weeks for employees with more than six months but less than one year of service, one month for workers with more than 12 months but less than five years of service, two months for those with at least five years but less than ten years of service and three months for employees with at least ten years of service. There is no statutory severance pay, but workers may negotiate this with their employer if they have worked there for more than six months continuously. After serving due notice, a worker has the right to quit her job. Both the Employment Act and the Constitution forbid the practice of forced or bonded labour.

Under the Occupational Health and Safety Act, employers are obliged to ensure the health, safety and welfare of all persons in the workplace. Employers should provide workers with protective clothing and equipment for free if they are exposed to wet or injurious substances. The employer is also obliged to provide employees with the instruction, training and supervision necessary to ensure the health and safety

of employees. These provisions are inspected by the Labour Inspectorate, which does not live up to the requirements set by the ILO regarding labour inspections in convention 81.

Article 55 of the Employment Act entitles employees to fully paid sick leave for one month. Workers cannot be dismissed while on sick leave or during the second month of the sickness, but the contract may be terminated if the employee is still unable to return to work. Insured workers are also entitled to medical benefits, including general medical care, specialist care, medicine, hospitalisation and transportation.

If a worker suffers a work related disability she is entitled to disability benefits. Workers with permanent disabilities should receive a lump sum payment equal to 60 months' earnings, or a proportion of it depending on the extent of the disability. Workers with temporary disabilities can receive benefits for up to 96 months, where the level of benefits depends on the extent of the injury, the circumstances and the expected duration of the incapacity. If a worker dies due to a work related injury, her dependents are paid the full benefit equal to 60 months of earnings.

Under the National Social Security Fund Act, workers are entitled to pensions when they reach the age of 55. Workers who are at least 50 years of age are entitled to early retirement at a reduced rate. The level of the pension benefit depends on contributions. Throughout the period that a worker is in employment, the employee pays 5% of her salary and the employer 10% of her salary into the pension fund. The resulting amount plus interest are paid as a lump sum upon retirement. If a worker dies before retirement, their dependents (including widows, widowers, children and parents) are entitled to 100% of their pension as survivors benefits. The lump sum of the pension benefits are also paid to a worker if she becomes disabled for reasons unrelated to work.

## Wage setting

The procedure for fixing the minimum wage is regulated under the Minimum Wages Advisory Boards and Wages Councils Act. The Minister of Labour may decide to fix a minimum wage for any area or occupation, where he or she considers the existence of such a minimum wage necessary. In such cases, the minister appoints a minimum wages advisory board to investigate the remuneration and conditions of employment in such an area or occupation. The minimum wages advisory board then reports on its findings and makes a minimum wage recommendation to the minister. At receipt of the recommendation, the minister may accept it. Alternatively, the minister may send the recommendation back to the advisory board with comments. The advisory board then considers the comments and sends the report back to the minister with or without amendments. After accepting the proposal, the minister publishes the proposals and invites representations

from the public on the proposals. After the end of a 30 day consultation, the minister sends the proposals and his or her own comments, possibly accompanied by comments from the advisory board, to the President of the Republic. The President may then accept the proposals, change or reject them.

The minimum wage provides a floor for the amount that workers should earn. However, as the minimum wage was last updated in 1984, its level of 6,000 Shillings per month is very low in comparison to current price levels and has little practical value. Employers organisations and trade unions in several sectors do negotiate collective agreements that are more in line with the current wage level.

Wages have to be paid regularly and timely. Article 43 of the Employment Act requires employers to pay wages at the end of the employment interval, which can be daily, weekly or monthly. Wages should be paid in legal tender. Workers should receive at least the minimum wage in cash, unless the Minister has approved partial payment of wages in kind.

The labour inspectorate is in charge of ensuring compliance with the law. In sectors and on matters where the legislation applies, labour inspectors may request documents and execute work place inspections. Where a labour inspector believes that an employer has not complied with minimum wage legislation, he or she may institute a civil suit to recover the sum of the wages on behalf of and in name of the employee concerned.

## Working time

Under the Employment Act, the maximum legal working time is 48 hours per week. Employers and employees may agree to longer working hours, but never more than ten hours per day or 56 hours per week. Workers who work in establishments where the maximum daily working time is at least eight hours have a right to a daily meal interval of 30 minutes (art. 53). Under article 51, a worker should not be required to work more than six consecutive days and has a right to a weekly day of rest, which may be any day that is customary or agreed between employer and employee. The Minister of Labour may decide to exclude workers in managerial positions and family workers from the right to the weekly rest day.

Workers have the right to a rest day on public holidays that are fixed by the state as compulsory rest days. If employees do work on a public holiday, they have the right to a compensatory rest day under article 54 of the Employment Act. Furthermore, workers who have worked for an employer for six consecutive months for at least 16 hours per week, are entitled to paid annual leave. The leave rights amount to seven days of leave per four months of continuous service. The annual leave cannot be relinquished by employee and article 54 subsection two, states that any agreement of the employee to do so shall be considered void.

The starting and ending dates of the annual leave can be scheduled in agreement between the employer and employee.

Workers may work overtime. Unless the normal working week has been extended by collective agreement or agreement between the employer and employee, hours worked in excess of eight hours per day and 48 hours per week, should be paid at a premium rate. Workers who work overtime should be paid 1.5 times the hourly rate. If employees work on a public holiday, they are entitled to twice their normal daily wage rate.

## Non-discrimination

Article 21 of the Constitution forbids discrimination on several grounds, including sex. The constitution guarantees equality before the law, yet inequalities persist in family law.

Under article six of the Employment Act it is the duty of all parties, including the Minister, labour officers and the Industrial Court to “seek to promote equality of opportunity, with a view to eliminating any discrimination in employment”. The act states that discrimination is prohibited on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, HIV status or disability. Discrimination includes any distinction, exclusion or preference preventing an employee from obtaining any benefit under a contract of service, except where the distinction is based on the inherent requirements of the job. The Employment act also prescribes the employers should pay men and women equal wages for work of equal value.

## Maternity and care

Maternity leave is regulated under the Employment Act; its maternity provisions apply to all women in employment, excluding those in the Peoples Defence Forces and dependent relatives working in undertakings where dependent relatives are the only employees and where a maximum of five dependents are employed. To qualify for maternity leave, women must give notice of their intention to take up maternity and present a medical certificate. Under article 56, women who qualify have the right to 60 days of maternity leave, four weeks of which are taken after the birth or miscarriage and constitute compulsory leave. During the full 60 working days of the leave, women are entitled to maternity benefits at 100% of their normal wages, paid by the employer. Fathers can get four working days of paid leave per year upon the birth of a child or after a miscarriage.

According to the 2011 Employment Regulations (art. 42), pregnant women should not be required to perform work that is harmful or hazardous to her health or that of the unborn child. Under the regulations, an employer is also required to present a pregnant employee with options for flexible work hours, lighter work load or alternative work arrangements.

The Employment and Labour Relations Act protects women from pregnancy related discrimination. Articles 17 and 56 states that dismissal on the basis of pregnancy is unfair and women may not be fired while pregnant or on pregnancy leave. Women also have the right to return to the job they previously held or to a suitable alternative job on terms and conditions no less favourable than those which would have applied if she had not gone on pregnancy leave. In cases where the woman is unable to return to work four weeks after confinement, the right to return shall be available up to eight weeks after the birth of miscarriage. If a woman is fired for pregnancy related reasons and presses charges against her employer, the burden of proof shall be on the side of the employer.

## **Sexual harassment**

Uganda outlawed domestic violence and female genital mutilation in 2010, although reports say that both practices continue to be widespread. Sexual harassment is forbidden under the penal code (art. 128) and the Employment Act (art. 7). The Labour Office is in charge of addressing sexual harassment and criminal sanctions exist under article 96 of the Employment Act. There are no specific laws or legal clauses against sexual harassment in education, public spaces or in service provision. Many employers, however, have adopted policies against sexual harassment in the workplace in order to delimit the act.

## 4 Resources

### 4.1 Online resources

Decent work check: <http://www.wageindicator.org/main/decent-work-check>

Freedom House countries at a crossroads reports 2012: <http://www.freedomhouse.org/report/countries-crossroads/countries-crossroads-2012>

ILO TRAVAIL legal Database of Conditions of Work and Employment Laws: <http://www.ilo.org/dyn/travail/travmain.home>

ITUC Annual Survey of Violations of Trade Union Rights 2012: <http://survey.ituc-csi.org/?lang=en>

World Bank Social Institutions and Gender Index: <http://genderindex.org/>

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