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# The influence of international labour standards on Brazilian legislation

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## Introduction

Brazil possessed practically no social and labour legislation when, along with 28 other States, it signed the Treaty of Versailles and became a founding Member of the International Labour Organisation. The absence of representative trade unions and the lack of interest shown by successive federal governments in social matters perpetuated this legislative vacuum until the revolution of 1930; what few laws had been adopted in the field of labour relations were rarely applied.

The weakness of trade unionism at the time can be explained by historical and sociological circumstances. The economy, largely based up to 1888 on slave labour in a territory of continental size without adequate communications, was not such as to favour the emergence of powerful trade unions capable of waging successful campaigns for the adoption of labour laws. Because of the predominantly rural character of the economy, the country also lacked the concentrations of workers that are essential for the existence of strong trade unions.

To be sure, workers' movements did exist but they had a local or regional character and were limited to specific trades. Of these, particular mention may be made of the efforts of the factory unions, especially in the State of São Paulo, that were organised on the initiative of Italian and Spanish immigrants of an anarchist bent. The only law that could be truly said to result from a workers' campaign, supported by parliamentarians and intellectuals, was the 1919 Act introducing industrial accident insurance.

Following the 1930 revolution, however, Brazil adopted an extensive body of legislation in the fields of labour and social welfare and could thus set about ratifying the ILO Conventions adopted since 1919.

The first explicit public manifestation of the influence that ILO standards were to exert on Brazilian social and labour legislation was the

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speech in which Getulio Vargas announced his government programme during his presidential campaign before the outbreak of the revolution:

> What little we have in the way of social legislation is not applied, or only to a very minor extent and sporadically, despite the obligations we have assumed as signatories to the Treaty of Versailles and the responsibilities arising out of our membership of the International Labour Organisation, whose Conventions and conclusions we fail to observe.[1]

During the provisional Vargas Government, a Ministry of Labour, Industry and Commerce was created and many legislative decrees concerning labour protection and social welfare were promulgated. Elected President of the Republic in July 1934, Vargas pressed the National Congress to adopt a number of very important social laws and pursued his legislative work during his second term in office (November 1937-October 1945).

The existing labour standards were codified and supplemented in 1943 in the Consolidation of Labour Laws (CLL),[2] which incorporated a great many ILO principles and standards relating to workers' individual rights. As regards collective labour relations, on which the ILO's standard-setting activity really began to focus only in 1948, the legislative decrees of 1939 and 1942, included in the CLL, followed the corporative model that had been adopted in the Constitution of 1937.

Brazil has ratified 57 ILO Conventions,[3] of which four (Nos. 3, 4, 7 and 41) have been replaced by revising instruments (also ratified) and three were denounced (Nos. 81 and 96 on the proposal of the Minister of Labour, and No. 110 following a decision of the Federal Supreme Court). Consequently, 50 international labour Conventions are currently in force in Brazil.

## Incorporation of ILO standards into Brazilian law

By virtue of the theory of juridical monism adopted by Brazil,[4] an international standard becomes part of national law at the moment the ratification of an international instrument takes effect. In the case of an international labour Convention, its provisions will be immediately applicable at the national level when the Convention is self-executing; where the Convention sets forth principles, the Federal Government must, within 12 months of depositing the instrument of ratification, adopt the additional measures necessary for the effective application of its standards; if the Convention is of a promotional nature, its objectives will have to be achieved in successive stages through medium- or long-term programmes and measures.

The procedure for bringing ILO Conventions before the competent authority and for their ratification is as follows:

*(a)* the President of the Republic submits the text of the Convention to the National Congress and expresses his opinion as to the appropriateness of its ratification;

*(b)* the National Congress makes a decision which, if favourable, takes the form of a legislative decree;

*(c)* the Federal Government informs the Director-General of the ILO and the Secretary-General of the United Nations of the ratification;

*(d)* the Federal Government adopts a promulgating decree fixing the date on which the Convention will enter into force throughout the national territory.

This procedure complies with the recommendation of the Committee of Experts on the Application of Conventions and Recommendations that –

> even when the automatic incorporation of a ratified Convention into internal law involves the implicit repeal or amendment of certain provisions of earlier legislation, it is important that appropriate measures of publicity should be taken so that all persons concerned should be aware of the amendments thus made to national law and so as to avoid any uncertainty as to the state of the law. The surest solution is to bring the legislation formally into conformity with the Conventions.[5]

The Federal Supreme Court of Brazil has declared, with regard to the validity of international treaties:

> The Constitution includes among the powers of the Federal Supreme Court that of judging, on special appeal, cases decided by lower courts, when the decision denies effect to a federal treaty or law. In our view, this means that treaties take effect independently of special law since if their entry into force depended on the adoption of a law, the reference to a treaty in the constitutional text would be totally pointless. In other words, the Constitution foresees the possibility of a law or treaty, as well as measures pertaining to it, being denied effect but does not envisage its formal reproduction in a national legislative text.[6]

This view was explicitly accepted by the Federal Government both in the resolution of the Standing Social Law Commission adopted by the Ministers of Labour and Foreign Affairs,[7] and in the opinion of the Office of the Legal Adviser approved by the President of the Republic.[8] It has always been upheld by the most renowned Brazilian experts on constitutional and international law.[9]

It is important to note that not only ratified Conventions have had an influence on Brazilian legislation. While under the system of juridical monism these are a *formal source* of law, unratified Conventions and Recommendations are *material sources* and as such fulfil their additional purpose of influencing national law in the member States of the ILO.

Within the space of an article such as this it would be impossible to describe, even summarily, all the provisions of labour and social legislation in Brazil that have been influenced by ILO Conventions and Recommendations or that are consistent with them. Consequently we shall confine ourselves to the most important matters of a general nature.

## A. Trade union rights

The Brazilian Constitution guarantees freedom of association for lawful purposes[10] and explicitly states in article 166 that "the establishment of such an association, its legal representation in collective labour contracts and the exercise of functions assigned to it by the public authorities shall be regulated by law".

The basis for the regulation of freedom of association is the CLL, whose principles rule out ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), because Brazilian law does not allow more than one trade union for each occupational or economic category in any given geographical area, although it permits the coexistence of more than one occupational association without trade union privileges; it establishes the form of organisation of trade unions for each category or each liberal profession and of federations of a predetermined number of unions, but permits only one national confederation for each branch of the economy; and it imposes an annual trade union contribution on all workers and employers, even if they have not voluntarily joined the union that legally represents them. In addition, the CLL permits the Minister of Labour to intervene in the management of a trade union.[11] Provisions of this type have been the subject of repeated criticism by the ILO's Committee of Experts on the Application of Conventions and Recommendations, which has declared that the suspension or removal from office of trade union leaders as well as the appointment of temporary administrators should be effected only through the courts.[12]

It is interesting to note that almost all Brazilian trade unions uphold the principle of a single trade union per category and the compulsory annual contribution imposed by law, but call for the revocation of the Minister of Labour's power of intervention. In support of this demand political parties, parliamentarians, jurists and trade union leaders have cited the conclusions of the ILO Governing Body's Committee on Freedom of Association respecting intervention by administrative authority.[13]

The Bill prepared by the Interministerial Commission on the Revision of the CLL appointed by President Geisel, and presided over by the author, provided that intervention in a trade union organisation should be effected only through the courts,[14] in conformity with the aforementioned conclusions of the ILO supervisory bodies. The present Government did not support this Bill. It should be borne in mind, however, that Brazil has not ratified Convention No. 87.

As regards employers' behaviour concerning the exercise of trade union rights, the CLL provides for sanctions against an employer who, by whatever means, endeavours to prevent an employee from joining a trade union, forming an occupational association or trade union, or exercising his rights as a member of an association or union. The CLL also prohibits persons who are not members of a union from interfering in its administration or services,

and under the Penal Code it is a crime to compel anyone, by violence or serious threats, to join or refrain from joining a given trade union or occupational association.[15]

The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), is not applicable to public servants engaged in the administration of the State but it does apply to employees of public undertakings.[16] The CLL provides for the right to organise, which is already guaranteed in the Constitution, but it prohibits employees of the State or of parastatal institutions from forming trade unions.[17] The doubts that existed about the right to organise of employees of semi-public companies (created by law, with the majority of the shares belonging to the State) and foundations established or maintained by the Government were resolved by Act No. 6128 of 1974, which guarantees this right. In the Preamble to this Act reference is made to article 170, paragraph 2, of the Brazilian Constitution and to Convention No. 98.

There is still conflict, however, between Brazilian legislation and Convention No. 98 with regard to employees of public undertakings (created by law, with all assets belonging to the State), since the authorities have still not granted them the right to organise. This has been the subject of comment by the Committee of Experts on the Application of Conventions and Recommendations.[18] We believe that if the employees of public undertakings were to submit the case to the courts, they would be granted the right to organise since, as already pointed out, the Federal Supreme Court considers that the Brazilian legal system upholds the theory of juridical monism and, moreover, this right emanates, in our view, from the Brazilian Constitution itself.[19]

It should be noted that the courts recognised the right of trade union officers and representatives to security of employment on the basis of Article 1 of Convention No. 98 shortly after its ratification by Brazil.[20] Later on, the legislation was amended precisely to restore this right,[21] which now continues to apply for 12 months after a trade union officer's tenure expires.[22]

As regards the Right of Association (Agriculture) Convention, 1921 (No. 11), also ratified by Brazil, the legislation in force guarantees rural workers and employers the same rights of association as those in the urban sector in accordance with the provisions of this Convention.

Finally, the promotion of collective bargaining dealt with in Article 4 of Convention No. 98 (the specific subject of the recent Convention No. 154) was addressed by the legislature in 1967, resulting in the replacement of the whole of Part VI of the CLL. The new provisions permit workers' and employers' organisations to conclude collective agreements applicable to their spheres of representation and workers' organisations and employers to sign collective agreements applicable to employees of the undertaking concerned.[23] No collective dispute of an economic nature may be submitted to the labour courts without having first exhausted the collective bargaining procedures. Collective agreements can lay down the arrangements governing individual employment relationships, establish the procedures for settling

disputes arising out of the application of the provisions of the agreement, and set up joint consultation and co-operation committees at the level of the undertaking.[24]

The fact that Brazilian labour legislation regulates almost every aspect of the employment relationship reduces the scope for collective bargaining. The majority of agreements are concerned with wages, but some supplement or initiate substantive law.[25]

## B. Discrimination in employment or occupation

When Brazil ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), its legislation already prohibited any type of discrimination in employment or occupation. The principle of equality before the law is also included in the present Constitution.[26] Moreover, under section 7 of Act No. 1390 of 1951 any act of discrimination, especially for reasons of race or colour, is punishable by three to 12 months' imprisonment and if it occurs in a self-governing institution, public undertaking or concessionary of a public service, the person responsible will be dismissed from his post. In the field of labour relations, section 461 of the CLL provides that "where the duties performed are identical, equal wages shall be paid, irrespective of sex, nationality or age, for work of equal value performed for the same employer in the same locality". This provision also complies with the principle embodied in the Equal Remuneration Convention, 1951 (No. 100), ratified by Brazil, and countless decisions of the labour courts uphold it.

The social insurance system applies equally to "all persons who are in employment or carrying on any gainful activity in the national territory", except for employees of foreign diplomatic or consular missions and official international organisations who are covered by a private insurance scheme.[27]

## C. Forced labour

Brazil has ratified the Forced Labour Convention, 1930 (No. 29), as well as the Abolition of Forced Labour Convention, 1957 (No. 105), and ordered the immediate and total elimination of this practice.

The Constitution "ensures to Brazilians and to foreigners residing in the country the inviolability of rights concerning life, liberty, security and property" and the free exercise "of any work, trade or profession, with observance of such conditions regarding capacity as the law may prescribe".[28] Under the Penal Code any person compelling another by violence or grave threats to exercise, or refrain from exercising, a craft, trade, profession or business, to work, or refrain from working, for a particular period or on specified days, or to sign a contract of employment, or who suborns workers with a view to transferring them from one part of the national territory to another, is deemed to have committed a crime and is liable to imprisonment or a fine.[29]

By applying these provisions the authorities have been able to cut short the few attempts at forced labour found to have been made in the interior of the country.

## D. Employment policy and human resources development

Brazil has ratified the Employment Service Convention, 1948 (No. 88), the Employment Policy Convention, 1964 (No. 122), and the Human Resources Development Convention, 1975 (No. 142).

A free federal public placement service, with agencies in all the Regional Labour Offices, is operated by the Ministry of Labour and supervised by the Secretariat for Employment and Wages. Besides this national network, it should be noted that various state governments also run employment services. Moreover, many trade unions have placement agencies in their respective headquarters.

Brazilian employment policy is endeavouring to implement the provisions of Convention No. 122 and to apply, by gradual stages, the measures set forth in this multilateral promotional instrument. The Ministry of Labour is benefiting from technical co-operation in this field under the ILO's World Employment Programme.[30]

Convention No. 122 has a threefold goal: *(a)* to promote full employment; *(b)* to ensure that such employment is as productive as possible; and *(c)* to ensure freedom of choice of employment and the fullest opportunity for each worker to acquire the vocational training that suits him and to use it in his employment without discrimination of any sort. These general objectives, which are in line with the principles of the Universal Declaration of Human Rights, were supplemented by the detailed provisions of Recommendation No. 122 of the same year.

There can be no doubt that the energy crisis, inflation and the economic recession have led over the past decade to substantial and widespread unemployment. Meanwhile, as Valticos points out, "the Convention does not require States to undertake to achieve full employment within a given time limit but rather to pursue a policy designed to promote it".[31]

Responsibility for overseeing employment policy as well as compliance with the provisions of the Convention and Recommendation of 1964 is entrusted to the National Employment Policy Council, which is composed of representatives of governmental bodies, employers and workers.[32] This Council forms part of the administrative structure of the Ministry of Labour, meets every week and has the following powers: (i) to propose guide-lines and measures for improving the machinery for stabilising the employment market; (ii) to evaluate the employment effects of any economic and financial measures that have been adopted or envisaged and to suggest measures to the government authorities that, without prejudice to overall policy, will promote employment; (iii) to make suggestions to the appropriate government authorities for the development of projects likely to

provide employment with a minimum of investment; and (iv) to propose ways of assisting the underemployed in order to improve their employability, productivity and incomes.[33]

With a view to standardising and co-ordinating vocational training activities throughout the country the Ministry of Labour set up a national manpower training system composed of various public and private bodies responsible for the training and further training of workers.[34]

The Federal Manpower Council, which comes under the Ministry of Labour, is responsible for "establishing standards and guide-lines for national vocational training policy, proposing measures to promote and develop trade apprenticeship training for workers, and approving vocational training projects of undertakings granted facilities under specific laws".[35] The Council is composed of representatives of four ministries, the directors-general of the National Industrial Apprenticeship Service (SENAI), the National Commercial Apprenticeship Service (SENAC) and the National Rural Apprenticeship Service (SENAR), three specialists in the matter and representatives of employers and workers.

Both the Employment Policy Council and the Manpower Council have taken into account in their decisions the proposals set forth in the Special Youth Schemes Recommendation, 1970 (No. 136), and the Human Resources Development Recommendation, 1975 (No. 150).

## E. Hours of work[36]

Brazil has not ratified the Hours of Work (Industry) Convention, 1919 (No. 1), or the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), since the CLL does not comply with international standards as regards overtime. Nevertheless, the Brazilian Constitution limits the working day to eight hours and the CLL lays down that the normal hours of work may not exceed this limit. By the same token, shorter hours have been established for various occupational categories,[37] and the 44-hour week, with or without Saturdays, has been instituted under collective agreements.

## F. Weekly rest

Brazil has ratified the Weekly Rest (Industry) Convention, 1921 (No. 14), and the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106). The legislation in force goes even further since it guarantees rest with pay during the week and on civil and religious holidays.[38]

As laid down in the above-mentioned Conventions, compulsory weekly rest periods last 24 hours and should fall on a Sunday, except when continuous work is authorised by the competent government authority for reasons of public interest or technical necessity. A minimum rest period of 11 consecutive hours must also be granted between two days' work.

## G. Paid leave

Brazil has ratified the Holidays with Pay Convention, 1936 (No. 52), but has been unable to ratify Convention No. 132 which revised it because of a slight discrepancy between the new chapter in the CLL on the subject[39] and some of the provisions of the ILO instrument. Nevertheless, the more important standards of the new Convention are all applicable in Brazil.

In fact, the above-mentioned chapter of the CLL applies to all urban and rural workers (except domestic employees, who are entitled to 20 working days' annual leave) and provides that workers have the right to 30 calendar days' paid leave, which may be reduced progressively according to the number of unjustified absences to a minimum of 12 days; involuntary absences such as duly certified absences on account of sickness, accidents, etc., are not considered unjustified. The employee receives his regular remuneration during his annual leave, including other benefits normally granted.[40]

## H. Wages

Brazil has ratified almost all the ILO Conventions concerning wages.[41] Under existing legislation,[42] the minimum wage is revised half-yearly by decree of the President of the Republic in the light of the recommendation which the National Wages Policy Council is required to make. This Council is composed of five Ministers of State and two representatives each of the employers and workers. The Federal Constitution guarantees the worker the right to "a minimum wage that, in accordance with the conditions of each region, is sufficient to meet the normal needs of a worker and his family". For each child under 14 years of age, a worker receives each month an additional 5 per cent of the minimum wage, whatever his remuneration, paid by the employer and reimbursed by a common fund administered by the social insurance service.

The CLL standards concerning the protection of wages fully comply with the provisions of Convention No. 95. Wages include not only the fixed amounts stipulated in the contract of employment but also any commissions, percentages and bonuses expressly or tacitly agreed upon. Allowances in kind that the employer normally provides to the employee, as well as the average amounts received from customers in the form of tips, are deemed to be part of the wages. The value of allowances in kind[43] should be "fair and reasonable" and "in no circumstances may payment be made in the form of alcoholic beverages or harmful drugs".

Still in the field of protection of wages, it should be noted that Brazilian legislation embodies the following principles: *(a)* wages may not be altered, except by mutual consent, and provided the worker is not prejudiced as a result; *(b)* the value of the wage may not be reduced; *(c)* wages must be paid in full without deductions, except for reasons stipulated in the contract of

employment; *(d)* wages may not be attached (except for alimony payments), thus protecting the worker from his creditors and in the event of an employer's indebtedness or bankruptcy; *(e)* wages must be paid regularly at intervals not exceeding one month, except in the case of commissions, percentages and bonuses; *(f)* wages must be paid personally to the employee against a receipt.[44] The Higher Labour Court has invoked Convention No. 117 to declare that the employer should provide the worker with an attestation detailing the amounts paid in wages and the deductions made.[45] This clause is also generally included in collective agreements.

Other provisions of Convention No. 95 are regulated by the CLL: payments are to be made in the legal currency of the country, on a working day and within working hours or immediately thereafter.[46]

## I. Occupational safety and health

Brazil has ratified the Radiation Protection Convention, 1960 (No. 115), the Hygiene (Commerce and Offices) Convention, 1964 (No. 120), the Maximum Weight Convention, 1967 (No. 127), and the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148).

The new chapter of the CLL dealing with occupational safety and health was approved by Act No. 6514 of 1977.[47] It is largely inspired by the Conventions, Recommendations, research and studies of the ILO, adopting the criterion of maximum permissible exposure limits to prevent injury from physical and chemical agents and risks arising out of contact with biological agents.

As regards the aforementioned chapter of the CLL, attention should be drawn to *(a)* the stress laid on collective measures in establishments or undertakings to eliminate, neutralise or reduce the effects of harmful physical, chemical and biological agents, or else the obligation to provide personal protective equipment, *(b)* the power conferred on regional labour officers to close down establishments, departments, machines or other equipment or suspend the performance of work involving a serious and imminent danger for the workforce, *(c)* the employer's obligation to pay a supplement for work in unhealthy or dangerous conditions until such time as the risk is eliminated or neutralised, and *(d)* the compulsory setting up of a works accident prevention committee in any establishment where the number of employees and the degree of risk warrant it. These committees are made up of representatives of the employers and the workers. The workers' representatives are elected by the workers themselves and are guaranteed security of employment during their term of office.[48]

Finally, it should be pointed out that the Minister of Labour enjoys some flexibility in approving regulations governing occupational safety and health standards.[49]

### J. Labour inspection

Brazil has ratified the Labour Inspection Convention, 1947 (No. 81), and accordingly approved regulations governing this field.[50] In 1971, however, a question concerning the form of payment of inspectors while on mission outside the territorial base to which they are assigned led the Minister of Labour to propose and obtain the denunciation of the ratification.[51]

Nevertheless, the above regulations, drawn up in accordance with the standards of the Convention, continue to be applied.

### K. Social security

In addition to the Conventions concerning industrial accidents, in the field of social security Brazil has ratified the Workmen's Compensation (Agriculture) Convention, 1921 (No. 12), the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), the Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42), and the Equality of Treatment (Social Security) Convention, 1962 (No. 118). The Social Security (Minimum Standards) Convention, 1952 (No. 102), however, has not been ratified, which is surprising since Brazil possesses an extensive system of social insurance that applies to all urban (including domestic) and rural workers, the self-employed and employers, and provides for the following benefits:

*(a)* for urban insured persons and/or their dependants: sickness benefit, invalidity pension, old-age pension, special pension, long-service pension, bonus for remaining at work after completing the qualifying period for a retirement pension, employment accident and occupational disease insurance, vocational rehabilitation, confinement benefit, family allowance, maternity allowance, survivors' pension and a lump sum;

*(b)* for rural insured persons and/or their dependants: invalidity and old-age pension, medical assistance, employment accident pension, survivors' pension, and funeral grant;

*(c)* for all insured persons and dependants: medical assistance (clinical, surgical, dental and pharmaceutical) on a scale to be "determined by the financial resources available and by local conditions".[52]

The amounts of the cash benefits exceed the percentages laid down in Convention No. 102 and are periodically adjusted in line with the half-yearly revisions of the minimum wage.[53]

## Final observations

As pointed out earlier, this article merely summarises the Brazilian legislation of a general nature corresponding to the Conventions ratified,

with occasional excursions into other important international standards that have not been ratified. Nevertheless, it may be appropriate to mention that Brazil has also ratified other ILO Conventions whose scope is limited to specific activities or groups of workers.[54]

The influence of these Conventions on Brazilian legislation is considerable. In its memorandum of 9 November 1942 the CLL Drafting Committee declared that it had been influenced by the international Conventions concerning the employment of young persons and women. In the report on the Bill, dated 5 November 1942, the Committee stated that it had eliminated the rule establishing inferior remuneration conditions for minors and women since these were in open contradiction with the "Christian principle of equality set forth as the seventh principle in Article 427 of the Treaty of Versailles" (which laid the foundations for the ILO), and argued in the same report that "the chapter on the basic principles of the policy for the protection of women workers was completely new since the legislation in force had been superseded by the international Conventions ratified and promulgated by our Government".

Furthermore, the report of the Interministerial Commission on the Revision of the CLL, dated 11 March 1979, stressed that one of the aims of the Bill was "to introduce provisions contained in international Conventions ratified by Brazil" which, while forming part of national substantive law, were not all included in the text of the CLL.

As regards minors and women, it may be appropriate to recall two cases that reflect the effectiveness of the supervision exercised by the Committee of Experts on the Application of Conventions and Recommendations.

First, when Brazil ratified the Minimum Age (Industry) Convention, 1919 (No. 5), and the Minimum Age (Sea) Convention (Revised), 1936 (No. 58), under no circumstances was it permitted to employ children under 14 years of age. In 1967, however, Legislative Decree No. 229[55] amended section 403 of the CLL to permit the employment of a child aged 12 to 14 years provided it was on "light work which is not harmful to his health or normal development" and would not prevent attendance at school. The Committee of Experts considered that this amendment conflicted with the above-mentioned Conventions. A new Bill was then prepared which settled the matter in accordance with the provisions of the international instruments. This Bill became law as Decree No. 66280 of 1970.

Second, Brazil has ratified the Maternity Protection Convention (Revised), 1952 (No. 103), which lays down that the cash benefits due to a pregnant woman worker during the 12 weeks' maternity leave shall be provided by means of compulsory social insurance or by means of public funds. However, the CLL made the employers responsible for paying such benefits, which could have encouraged discrimination against women workers. A Bill was then prepared transferring this obligation to the social insurance system, but it was not approved. The Committee of Experts emphasised that the national law was in conflict with the international

standard. Subsequently, when the new President of the Republic was elected, Act No. 6136 of 1974 was adopted, under which the employer pays the woman worker her full wage during the period of leave and is immediately reimbursed by the social insurance scheme.

It can be seen, therefore, that the standards adopted by the International Labour Conference have had a great influence on Brazilian legislation, especially with regard to individual conditions of work. In addition, some provisions of still unratified Conventions and Recommendations have been incorporated into collective contracts of employment, judgements of the labour courts and works regulations.[56]

We are convinced that a careful study – such as was carried out by the now-defunct Standing Social Law Commission – could lead to the ratification of a further ten Conventions or more since the provisions of Brazilian legislation are in harmony with their standards. This is the case with the Social Security (Minimum Standards) Convention, 1952 (No. 102); the Minimum Age (Underground Work) Convention, 1965 (No. 123); the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134); the Benzene Convention, 1971 (No. 136); the Occupational Cancer Convention, 1974 (No. 139); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147); the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152); the Occupational Safety and Health Convention, 1981 (No. 155); and the Maintenance of Social Security Rights Convention, 1982 (No. 157).

## Notes

[1] J. de Segadas Vianna: *Brasil trabalhista*, Colecão Brasil (Rio de Janeiro, 1944), p. 18.

[2] See *Legislative Series* (Geneva, ILO), 1943 – Bra. 1. The original text has since been supplemented and amended on numerous occasions.

[3] Since 1934 Brazil has ratified 57 Conventions: 12 between 1934 and 1938 (Nos. 3, 4, 5, 6, 7, 16, 41, 42, 45, 52, 53 and 58); No. 48 in 1948; 38 between 1952 and 1969 (Nos. 11, 12, 14, 19, 21, 22, 26, 29, 81, 88, 89, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 115, 116, 117, 118, 120 and 122); and six since 1970 (Nos. 124, 125, 127, 131, 142 and 148).

[4] For more details see A. Süssekind: *Direito internacional do trabalho* (São Paulo, LTr, 1983), particularly pp. 66 ff. and 190 ff.

[5] ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4), International Labour Conference, 54th Session, Geneva, 1970, para. 19.

[6] See Judgement of the Federal Supreme Court, Full Bench, 4 August 1971, Case No. 71.154, Judge Rapporteur Oswaldo Trigueiro; *Revista Trimestral de Jurisprudência*, No. 58, pp. 71-72. See also Judgement of the Federal Supreme Court, 29 September 1958, Case No. 24.006, Judge Rapporteur Orozimbo Notato.

[7] See the Decision of 16 September 1958 in Case No. 186.063, Judge Rapporteur Arnaldo Süssekind.

[8] Opinion No. 738-H, in *Diário Oficial* (Brasília), 26 Sep. 1968.

[9] See Pontes de Miranda: *Comentários à Constituição de 1967* (Rio de Janeiro, 2nd ed., 1970), Vol. III, p. 110; Castro Nunes: *Teoria e práctica do poder judiciário* (Rio de Janeiro, 1943), p. 320; Carlos Maximiliano: *Comentários à Constituição de 1946* (Rio de Janeiro, 1948), Vol. II, p. 358; Haroldo Valladão: *Direito internacional privado* (Rio de Janeiro, 5th ed., 1980), Vol. I, pp. 56-57; and Marotta Rangel: "Os conflitos entre o direito interno e os tratados internacionais", in *Boletim da Sociedade Brasileira de Direito Internacional* (Rio de Janeiro), 1967, Nos. 45/6, pp. 54 ff.

[10] Article 153, para. 28, of the Constitution.

[11] Sections 516, 519, 577, 535, 578 ff. and 528 of the CLL.

[12] ILO: *Freedom of association and collective bargaining*, Report III (Part 4 B), International Labour Conference, 69th Session, Geneva, 1983, para. 177.

[13] The Committee of Experts only accepted the removal from office of trade union leaders and the dissolution or suspension of organisations by way of normal judicial procedure, with full right of defence and appeal (see ILO: *Freedom of association: Digest of decisions of the Freedom of Association Committee of the Governing Body of the ILO* (Geneva, 2nd ed., 1976), Decisions Nos. 145, 146, 156, 157 and 161).

[14] Section 587 of the Bill provided that "If a trade union body infringes the fundamental standards laid down in this chapter, in such a way as to disturb public order, the Minister of Labour shall submit proof of these facts to the Department of the Public Prosecutor with a view to initiating proceedings before the federal courts, which may lead to the temporary suspension of the activities of that body or the removal from office of its officers. In the event of serious and imminent danger to public order, the Department of the Public Prosecutor may require preventive measures to be taken. The court shall make a decision with respect to the preventive measures within five days at most and the effects of such decision shall remain in force until judgement is pronounced, which must be within 90 days."

[15] Sections 543, para. 6, and 525 of the CLL; section 199 of the Penal Code.

[16] In order to determine the range of persons covered by Convention No. 98 it is important to draw a distinction between public servants directly engaged in the administration of the State (civil servants employed in government ministries and other comparable bodies) and officials acting as supporting elements in these activities, on the one hand, and other persons employed by the Government, by public undertakings or by autonomous public institutions, on the other hand. Only the former category can be excluded from the scope of the Convention. See ILO: *Freedom of association and collective bargaining*, op. cit., para. 255.

[17] Sections 511 and 565 of the CLL.

[18] See the observation relating to Brazil under Convention No. 98 in ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4 A), International Labour Conference, 70th Session, Geneva, 1984, pp. 178-180.

[19] "In the case of an economic activity exercised by a State of the Union, public undertakings and semi-public undertakings shall be governed by the standards applicable to private enterprises, including those laid down in labour laws and laws on obligations" (article 170, para. 2, of the Constitution).

[20] Judgement of the Higher Labour Court in Case No. 1.898/55, in which the Judge Rapporteur, Oscar Saraiva, explicitly cited Convention No. 98 (*Diário da Justiça* (Curitiba), 2 Mar. 1956).

[21] Legislative Decree No. 229 of 1967 (*Legislative Series*, 1967 – Bra. 2).

[22] Section 543, para. 3, of the CLL as amended by Act No. 5911 of 1973.

[23] Section 611 of the CLL.

[24] Sections 616, para. 4, 613, IV and V, and 621 of the CLL.

[25] In 1981 the Ministry of Labour registered 1,351 agreements, 716 concerning industry, 613 concerning services and 22 concerning agriculture.

[26] "All are equal before the law, without distinction as to sex, race, occupation, religious creed, or political convictions. Racial prejudice shall be punished by law" (article 153, para. 1, of the Constitution).

[27] Sections 2 and 5, para. 1, of Act No. 3087 of 1960 (*Legislative Series*, 1960 – Bra. 1 A).

[28] Article 153, introductory para. and para. 23, of the Constitution.

[29] Sections 197, I, 198 and 20 of the Penal Code.

[30] The Tripartite World Conference on Employment, Income Distribution and Social Progress and the International Division of Labour, convened by the ILO in 1976, recommended, inter alia, the ratification of Convention No. 122 and its revision. In June 1984 the International Labour Conference adopted a Recommendation (No. 169) concerning employment policy, which had been the subject of a first discussion the previous year, to supplement the 1964 Convention and Recommendation (No. 122).

[31] N. Valticos: *International labour law* (Deventer, Kluwer, 1979), p. 117.

[32] The Council is composed of the Secretary for Employment and Wages (Chairman), the Director of the Documentation and Information Centre of the Ministry of Labour and representatives of the Ministries of Finance, Agriculture, Industry and Commerce, Mines and Power, the Interior, and Transport, the Planning Secretariat attached to the Office of the President, and the workers and employers.

[33] Section 1 of Decree No. 79602 of 1977 (*Legislative Series*, 1977 – Bra. 2).

[34] Sections 1 and 2 of Decree No. 77362 of 1976.

[35] Ministry of Labour Decision No. 3312 of 1978.

[36] On this and the two following points see also ILO: *Working time: Reduction of hours of work, weekly rest and holidays with pay*, Report III (Part 4 B), International Labour Conference, 70th Session, Geneva, 1984.

[37] For example, bank employees, telephonists and telegraphists, cinema operators, performers, engineers, architects, agronomists and miners, six hours a day or 36 a week; journalists, five hours; teachers, four consecutive or six non-consecutive classes; doctors, four hours.

[38] Article 165, VII, of the Constitution; sections 1 and 8 of Act No. 605 of 1949 (*Legislative Series*, 1949 – Bra. 1).

[39] This chapter was prepared by the Interministerial Commission on the Revision of the CLL and approved by Legislative Decree No. 1535 of 1977 (ibid., 1977 – Bra. 1).

[40] Sections 130, 131, 142, 146, 147 and 138 of the CLL.

[41] Minimum Wage-Fixing Machinery Convention, 1928 (No. 26); Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93); Protection of Wages Convention, 1949 (No. 95); Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99); Equal Remuneration Convention, 1951 (No. 100); Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Part IV of which concerns remuneration and related questions; and Minimum Wage Fixing Convention, 1970 (No. 131).

[42] Section 18 of Act No. 6708 of 1979; article 165, I, of the Constitution; and Act No. 4266 of 1963 (*Legislative Series*, 1963 – Bra. 2).

[43] Sections 457 and 458 of the CLL.

[44] Sections 468, 462, 449, 459 and 464 of the CLL, section 649, IV, of the Code of Civil Procedure, and section 124, para. 3, of the Bankruptcies Act.

[45] See the Judgement of the Higher Labour Court, Full Bench, Case RO-DC-49/70, Judge Rapporteur D. de Souza Mora, in *Diário da Justiça*, 18 Aug. 1970: "The said Convention entered into force in Brazil on 24 March of this year and obviously forms part of national law. It is appropriate that the principle should be embodied in a legal standard." Numerous decisions were handed down in the same vein. See also Lima Peixeira (Jr.): *Repertório de Jurisprudência Trabalhista*, Vol. I, pp. 304-305.

[46] Sections 463, 462 and 465 of the CLL, and Decision 3245 of 1971 of the Minister of Labour.

[47] *Legislative Series*, 1977 – Bra. 3.

[48] Sections 160, 166, 191, 161, 193, 194, 195, 163, 164 and 165 of the CLL.

[49] Section 200 of the CLL. Twenty-eight standards have already been issued regulating such questions as medical examinations; environmental hazards; electrical services; transport of materials; machines and equipment; furnaces; unhealthy activities and operations; dangerous

activities and operations; ergonomics; construction, demolition and repair work; explosives; inflammable liquid fuels; outdoor work; underground work; protection against fires; sanitary conditions in workplaces, and industrial waste.

[50] Decree No. 55841 of 1965.

[51] Decree No. 68796 of 1971.

[52] *Legislative Series*, 1973 – Bra. 2.

[53] Sections 25, 292, 153-159, 315 and 316 of the Benefits Regulations, and section 68 of the Consolidation of Social Insurance Laws.

[54] In addition to the legal standards of a general order mentioned in this article and laws concerning young persons and women which comply with provisions of the Minimum Age (Industry) Convention, 1919 (No. 5), the Minimum Age (Sea) Convention (Revised), 1936 (No. 58), and the Maternity Protection Convention (Revised), 1952 (No. 103), it should be noted that other Conventions whose application is limited to specific categories of persons have also influenced Brazilian legislation, or are in harmony with it: Conventions Nos. 6 and 124 (young persons), Nos. 45 and 89 (women), Nos. 22, 53, 58, 91, 92, 108 and 109 (seafarers), Nos. 50 and 107 (indigenous populations) and Nos. 21 and 97 (migrant workers).

[55] *Legislative Series*, 1967 – Bra. 2.

[56] For example, absolute ban on the dismissal of pregnant women workers; detailed checks on wages paid and deductions made; communication in writing to a worker of the reasons for dismissal; paid leave for students to sit examinations; joint conciliation or consultation and co-operation boards in undertakings; procedures for examining internal complaints in undertakings, and so on.