

## CHAPTER 3

### A COMPENDIUM OF NATIONAL LAW AND PRACTICE

#### **I. The prohibition of night employment of women in industry**

**86.** The legal regulation of night work by women in industry differs considerably from country to country. Although most countries have some form of legislation limiting the employment of women workers during the night, the form, content and scope of the various restrictions are often dissimilar. Accordingly, the degree to which effect is given to the principles set out in the Conventions under review is hard to evaluate and does not allow for easy generalizations. In the paragraphs that follow, an effort is made to review national laws and practice by grouping together countries applying comparable labour standards with regard to women's night work while differentiating between States parties and non-parties to the four night work instruments.

**87.** In some countries, there is a general prohibition against the night work of women, without distinction of age, in all industrial undertakings. This is principally the case of States parties to one of the Conventions under consideration such as *Algeria*,<sup>1</sup> *Angola*,<sup>2</sup> *Austria*,<sup>3</sup> *Bangladesh*,<sup>4</sup> *Belize*,<sup>5</sup>

<sup>1</sup> Act No. 90-11 of 21 April 1990 respecting labour relations, arts. 27, 29. The prohibition refers to the eight-hour period between 9 p.m. and 5 a.m.

<sup>2</sup> General Labour Act No. 2/2000 of 11 February 2000, art. 271(1b), (2c). However, the General Labour Inspectorate may authorize night work when the work is organized on a rotational basis and women workers have given their consent to being included in the shifts.

<sup>3</sup> Federal Act of 25 June 1969 regarding women's night work, s. 3. The Government has reported, however, that it has embarked on a process of gradually relaxing the ban on night work of women, and that the 1998 amendment to the Federal Act providing for exemptions through collective agreements was introduced as an interim solution until a new gender-neutral Act on night work is adopted and Convention No. 89 is again open to denunciation.

<sup>4</sup> Factories Act, 1965, art. 65(1b); Shops and Establishments Act, 1965, art. 23; Tea Plantations Labour Ordinance, 1962, art. 22. However, women may exceptionally work during the night in commercial establishments and tea plantations with the permission of the chief inspector.

<sup>5</sup> Labour Act of 1980, Ch. 234, s. 161(1a).

*Bolivia,*<sup>6</sup> *Burkina Faso,*<sup>7</sup> *Cameroon,*<sup>8</sup> *Central African Republic,*<sup>9</sup> *Chad,*<sup>10</sup> *Costa Rica,*<sup>11</sup> *Cyprus,*<sup>12</sup> *the Democratic Republic of the Congo,*<sup>13</sup> *Congo,*<sup>14</sup> *Djibouti,*<sup>15</sup> *Egypt,*<sup>16</sup> *Gabon,*<sup>17</sup> *Guinea,*<sup>18</sup> *Guinea-Bissau,*<sup>19</sup> *India,*<sup>20</sup> *Iraq,*<sup>21</sup> *Kenya,*<sup>22</sup> *Lebanon,*<sup>23</sup> *Libyan Arab Jamahiriya,*<sup>24</sup> *Madagascar,*<sup>25</sup> *Mali,*<sup>26</sup>

<sup>6</sup> Supreme Decree of 26 May 1939 to issue the Labour Code, arts. 46, 60, and Decree of 23 August 1943 regulating the General Labour Act, art. 53.

<sup>7</sup> Act No. 11-92/ADP of 22 December 1992 establishing the Labour Code, arts. 80, 83. See also Decree No. 5254 IGTL/AOF of 19 July 1954 respecting the employment of women and pregnant women, art. 5, and Decree No. 436/ITLS/HV of 15 July 1953 concerning night work hours, art. 1.

<sup>8</sup> Labour Code, Law No. 92/007 of 14 August 1992, ss. 81, 82. The rest period for women must not be less than 12 consecutive hours including the night period between 10 p.m. and 6 a.m.

<sup>9</sup> Act No. 61-221 of 2 June 1961 establishing the Labour Code, arts. 120, 121. See also Decree No. 839 IIT of 22 November 1953 concerning night work hours, art. 1, and Decree No. 3759 of 25 November 1954 respecting the employment of women and pregnant women, arts. 3, 4.

<sup>10</sup> Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code, arts. 205, 208.

<sup>11</sup> Labour Code of 1943, as amended up to 1996, art. 88(b).

<sup>12</sup> Employment of Women (During the Night) Law of 26 February 1932, s. 3. However, the Government has announced its intention to abolish the existing protective legislation for women which is regarded as discriminatory and to denounce Convention No. 89.

<sup>13</sup> Legislative Ordinance No. 67/310 of 9 August 1967 to establish a Labour Code, ss. 106, 107, and Order No. 68/13 of 17 May 1968 to lay down conditions of work for women and children, ss. 13, 16.

<sup>14</sup> Act No. 45-75 of 15 March 1975 establishing the Labour Code, arts. 106, 108, 109.

<sup>15</sup> Labour Code for Overseas Territories, Law No. 52-1322 of 15 December 1952, art. 114.

<sup>16</sup> Labour Code promulgated by Act No. 137 of 1981, art. 152. The prohibition does not apply, however, to "female workers purely engaged in agriculture"; *ibid.*, art. 159.

<sup>17</sup> Act No. 3/94 of 21 November 1994 establishing the Labour Code, arts. 166, 167, 169.

<sup>18</sup> Ordinance No. 003/PRG/SGG/88 of 28 January 1988 issuing the Labour Code, ss. 148, 149, and Decree No. 1392/MASE/DNTLS/90 of 15 May 1990 respecting the employment of women and pregnant women, art. 1.

<sup>19</sup> General Labour Act No. 2/86 of 5 April 1986, art. 160.

<sup>20</sup> Factories Act No. 63 of 23 September 1948, as amended, s. 66(1b).

<sup>21</sup> Act No. 71 of 27 July 1987 promulgating the Labour Code, s. 83(1), (2).

<sup>22</sup> Employment Act No. 2 of 15 April 1976, s. 28(1). The Government has indicated that it intends to amend this section considering that it discriminates against women workers.

<sup>23</sup> Labour Code, Law of 23 September 1946, as amended by Law No. 536 of 24 July 1996, art. 26.

<sup>24</sup> Labour Code, Act No. 58-2970 of 1 May 1970, art. 96.

<sup>25</sup> Act No. 94-029 of 25 August 1995 establishing the Labour Code, art. 92.

<sup>26</sup> Act No. 92-020 of 23 September 1992 establishing the Labour Code, arts. L.141, L.186. Women must have a minimum nightly rest of 12 hours including the period between 9 p.m. and 5 a.m.

*Mauritania*,<sup>27</sup> *Morocco*,<sup>28</sup> *Niger*,<sup>29</sup> *Pakistan*,<sup>30</sup> *Philippines*,<sup>31</sup> *Rwanda*,<sup>32</sup> *Saudi Arabia*,<sup>33</sup> *Senegal*,<sup>34</sup> *Slovakia*,<sup>35</sup> *Slovenia*,<sup>36</sup> *Togo*,<sup>37</sup> *Tunisia*<sup>38</sup> and *Venezuela*.<sup>39</sup> Yet, countries not having ratified, or no longer bound by any of the night work instruments such as *Croatia*,<sup>40</sup> *Dominica*,<sup>41</sup> *Jordan*,<sup>42</sup> *Malaysia*,<sup>43</sup>

<sup>27</sup> Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book II, s. 9, and Order No. 5254 IGTLS/AOF of 19 July 1954 respecting the employment of women and pregnant women, art. 3.

<sup>28</sup> Decree of 2 July 1947 to regulate employment, art. 12.

<sup>29</sup> Ordinance No. 96-039 of 29 June 1996 establishing the Labour Code, art. 98, and Decree No. 67-126/MFP/T of 7 September 1967 on labour regulations, art. 107.

<sup>30</sup> Factories Act, 1923, as amended to 1987, s. 23-C(2); Factories Act, 1934, as amended to 1987, s. 45(1b).

<sup>31</sup> Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 130.

<sup>32</sup> Labour Code, Act of 28 February 1967, art. 121. However, the Government has taken the position that existing legislation is outdated, since current practice favours the abolition of the prohibition and the enactment of night work regulations applicable to all workers. It intends, therefore, to draft new rules following the provisions of Convention No. 171 as soon as the new labour laws are adopted by the Transitional National Assembly.

<sup>33</sup> Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code, art. 161.

<sup>34</sup> Order No. 5254/IGTLS/AOF of 19 July 1954 regarding conditions of work of women and pregnant women, art. 3.

<sup>35</sup> Act No. 451/1992 providing for the Labour Code, ss. 90(2), 151. The law provides for an uninterrupted rest for women of no less than 11 hours including the period between 10 p.m. and 6 a.m.

<sup>36</sup> Act on the fundamental rights ensuing from labour relations, Text No. 921 of 28 September 1989, art. 45, and the Labour Relations Act of 29 March 1990, as amended by Act of 30 January 1991, art. 79.

<sup>37</sup> Ordinance No. 16 of 8 May 1974 establishing the Labour Code, art. 110, and Decree No. 884-55/ITLS of 28 October 1955 respecting the employment of women and children, arts. 7, 8.

<sup>38</sup> Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 66.

<sup>39</sup> Decree No. 1.563 of 31 December 1973 on labour act regulations, art. 208.

<sup>40</sup> Labour Act of 17 May 1995 (Text No. 758), art. 52.

<sup>41</sup> Employment of Women, Young Persons and Children Act, 1991, art. 10(1).

<sup>42</sup> Labour Code, Law No. 8 of 1996, art. 69, and Ministerial Order No. 4201 of 30 April 1997 concerning the jobs and hours in which the employment of women is prohibited, art. 4.

<sup>43</sup> Employment Act No. 265 of 1955, as amended to 1981, ss. 34(1), 36, 2B. The Director-General of Labour may, however, on application made to him in any particular case, exempt in writing any female employee or class of female employees from any restriction subject to any conditions he may impose. Before exemption is given, the Director-General of Labour usually consults the employees or trade unions concerned to take account of their opinions. In addition, the Minister of Labour has general power to grant exemptions, subject to such conditions as he may deem fit to impose, to any person or class of persons from all or any of the prohibitions prescribed in employment laws. However, this discretionary power of the Minister of Labour has rarely been exercised.

*Oman*,<sup>44</sup> *Papua New Guinea*,<sup>45</sup> *United Kingdom (Falkland Islands)*,<sup>46</sup> *Gibraltar*,<sup>47</sup> *Guernsey*<sup>48</sup>), or *Yemen*<sup>49</sup> have also enacted legislation banning the employment of women in industry during the night. Similarly, in *Bahrain*,<sup>50</sup> *Kuwait*,<sup>51</sup> *Syrian Arab Republic*,<sup>52</sup> and the *United Arab Emirates*,<sup>53</sup> women may not be employed at night except otherwise regulated in specific orders of the Minister of Labour and Social Affairs, while in *Indonesia*,<sup>54</sup> women are not allowed to perform work at night unless specific authorization is granted to enterprises of specific nature fulfilling certain requirements.

**88.** A few countries are in the process of amending existing legislation with a view to eliminating the general prohibition on night work of women. This is the case in *Ghana*,<sup>55</sup> and the *Russian Federation*.<sup>56</sup>

**89.** In some countries, while national laws contain provisions proscribing the employment of women during the night, such provisions are not legally enforced and remain inactive. In *Ukraine*,<sup>57</sup> for instance, the general ban on

<sup>44</sup> Labour Law enacted by the Sultani Decree No. 34/73, s. 80.

<sup>45</sup> Employment Act No. 54 of 21 August 1978, s. 99(1).

<sup>46</sup> Employment of Women, Young Persons and Children Ordinance, 1967, s. 2.

<sup>47</sup> Employment Ordinance.

<sup>48</sup> Act relative to the Employment of Women, Young Persons and Children, 1926, art. 1(3).

<sup>49</sup> Labour Code, Act No. 5 of 1995, as amended by Act No. 25 of 1997, art. 46(2).

<sup>50</sup> Legislative Decree No. 23 of 16 June 1976 promulgating the labour law for the private sector, as amended by Legislative Decree No. 14 of 1993, art. 59.

<sup>51</sup> Act No. 38 of 1964 regarding employment in the private sector, art. 23.

<sup>52</sup> Law No. 91 of 5 April 1959 establishing the Labour Code, art. 131.

<sup>53</sup> Federal Law No. 8 of 1980 regarding regulation of labour relations, art. 27.

<sup>54</sup> Law on Manpower Affairs, No. 25 of 3 October 1997, art. 98(1c), (2c), and Ministerial Regulation No. 04/MEN/1989 on procedures to employ women workers at night, arts. 1-3. See also Act No. 1 of 6 January 1951, art. 7.

<sup>55</sup> Labour Decree, 1967, s. 41(1). In the terms of art. 78(1a), however, of the new draft Labour Code, it would only be prohibited to employ a pregnant woman without her consent to do night work between 10 p.m. and 7 a.m.

<sup>56</sup> Labour Code of 9 December 1971, as amended up to 30 April 1999, art. 161. In the terms of a new draft Labour Code now tabled before the State Dumas, only pregnant women shall be prohibited from working at night, while women with children aged under 14 years could be employed on night work only with their consent.

<sup>57</sup> Labour Code of 11 April 1994, art. 175. The Government has reported that as at 1 January 1999, as many as 314,457 female workers were employed on night shifts. However, within the framework of an action programme designed to improve security conditions, occupational hygiene and the working environment in all sectors and in all regions, Regulations No. 381 of 27 March 1996 were adopted on the programme of disengagement of women from productions linked with arduous work and dangerous conditions as well as limitation of their work at night for 1996-98. As a result, some 15,800 women who were used to working in industrial occupations such as foundry, plate and sheet rolling, pipe rolling, furniture manufacturing, metal coating or dyeing have been released from night work.

women's night employment is not observed in practice, so that women may freely work during the night in all branches of economic activity. The Government of *Romania*<sup>58</sup> has stated that, while a general prohibition against the employment of women in industrial enterprises during the night is formally still in force, in conformity with Convention No. 89 which was ratified in 1957, it no longer corresponds to social and economic realities and at present applies only to pregnant and breastfeeding mothers. In *France*, article L.213-1 of the Labour Code prohibiting the night employment of women in industrial work has been in disuse since the 1991 decision of the European Court of Justice in the *Stoeckel* case, though not yet formally repealed. In November 2000, the French Parliament adopted a Bill abolishing the ban on the night work of women and introducing night work regulations for both male and female workers.

**90.** In some other countries, even though a comprehensive prohibition may exist, it is often diluted by means of broad exceptions or industry-wide derogations. In *Turkey*,<sup>59</sup> for instance, girls and women irrespective of their age are, in principle, not allowed to engage in industrial work during the night. However, women who have completed 18 years of age may, subject to certain conditions, be employed on night shifts in industrial works whose nature requires the employment of women workers, that is works requiring dexterity, speed and attention which are performed at a steady pace and do not require an excessive amount of energy or strength. In the case of *Lithuania*, the Government has reported that women's night work is allowed in those branches of economic activity where such work is indispensable, such as trade, social services, textile and light industry, food industry and other spheres of production involving shift work. Similarly, in *Latvia*,<sup>60</sup> and the *Republic of Moldova*,<sup>61</sup> women's night work is generally prohibited except in such kinds of work where it is highly necessary. In *Mauritius*,<sup>62</sup> where night work in industrial undertakings remains, in principle, prohibited for female workers, specific legislation has been enacted to the effect that women employed in export

<sup>58</sup> Labour Code, Law No. 10 of 23 November 1972, arts. 153, 154. A new draft Labour Code is currently the subject of consultations with the social partners. Contrary to existing legislation, the new Code does not address separately the employment of women, but gives pride of place to fundamental principles such as non-discrimination and equality of opportunity and treatment, and proposes to limit the restrictions on night work only to young persons and pregnant or breastfeeding mothers.

<sup>59</sup> Labour Act No. 1475 of 25 August 1971, art. 69, and Decree No. 7/6909 of 27 July 1973 to approve regulations respecting the conditions of work for women working night shifts on industrial works, art. 2.

<sup>60</sup> Labour Code, as amended to 25 October 1994, art. 169.

<sup>61</sup> Labour Code, Law of 25 May 1973, as amended up to 23 July 1998, art. 169. The Government has reported that because of the ongoing economic crisis most industrial enterprises only operate during the day and that night work is limited to sectors such as the wine and tobacco industries.

<sup>62</sup> Labour Act, 1975, s. 15(3a).

processing zones or other industrial enterprises may be required to work between 10 p.m. and 5 a.m. provided that they will not resume work before a lapse of 12 hours.<sup>63</sup>

**91.** In some countries, the employment of women in industrial undertakings during the night is, in principle, permitted subject to certain conditions. In *Sri Lanka*,<sup>64</sup> for instance, all women may, in principle, be assigned to night work positions subject to the following restrictions: (i) no woman may be compelled to work at night against her will; (ii) written sanction of the Commissioner of Labour must be obtained by every employer prior to the employment of women to work after 10 p.m.; (iii) no woman who has been employed between 6 a.m. and 6 p.m. may be required to work after 10 p.m. on any day; (iv) no woman may be employed for more than ten days on night work, during any one month. In the *Republic of Korea*,<sup>65</sup> female employees may not be forced to work during a time period from 10 p.m. to 6 a.m. except with their consent and on condition that the approval of the Ministry of Labour has been obtained. In *Israel*,<sup>66</sup> women's night work is in principle permitted subject to certain conditions set by the Minister of Labour and Social Welfare in the interest of their health and security as follows: (i) employees receive a 12-hour break between workdays, (ii) transportation to work is provided if otherwise unavailable; (iii) hot drinks are provided during breaks; (iv) workers have appropriate places to rest during breaks.

**92.** The Committee has noted that, among the countries which refrain from applying women-specific regulations on night work for reasons of gender equality and non-discrimination, there are a few countries which are still under the obligation to continue to enforce a prohibition against the night work of women since they have formally accepted one or more of the ILO instruments concerning the night work of women in industry. The Government of *Brazil*, for instance, which ratified Convention No. 89 in 1957 and is still bound by its provisions, reported that the night work of women is no longer prohibited following the promulgation of the Federal Constitution of 1988, article 5(I) of which lays down the principle of equality between men and women, while article 7(XXX) prohibits discrimination as to wages, type of work or recruitment criteria on grounds of sex, age, colour or civil status.<sup>67</sup> Likewise, the

<sup>63</sup> Export Processing Zones Act, 1970, s. 14(7), and Industrial Expansion Act No. 11 of 28 April 1993, s. 20(6).

<sup>64</sup> Employment of Women, Young Persons and Children (Amendment) Act, No. 32 of 1984, ss. 2A, 2B, 2C.

<sup>65</sup> Labour Standards Act No. 5309 of 13 March 1997, art. 68.

<sup>66</sup> Employment of Women Law, No. 5714-1954, s. 2(a). Israeli law further provides that an employer may not refuse to hire a woman only because she announced that she does not accept night work out of family considerations.

<sup>67</sup> According to the Government, Convention No. 89 has ceased to be effective, the Constitution having amended *ipso facto* arts. 379 and 380 of the Consolidation of Labour Acts that

Government of *South Africa*, which ratified Convention No. 89 in 1950 and has not so far denounced it, has indicated that its national legislation does not contain at present any prohibition on the employment of women at night since such a prohibition could be construed as discriminatory and would contradict existing labour laws which outlaw all forms of discrimination.<sup>68</sup> The Government of the *Czech Republic*, which has accepted both Convention No. 89 and its Protocol, has indicated that by virtue of a 1994 revision of the Labour Code the former prohibition of night work for women has been abolished and new gender-neutral regulations on night work have been introduced.<sup>69</sup> The Government of *Paraguay*, which ratified Convention No. 89 in 1966, reported that under the laws currently in force there is no general prohibition of night work for women except for expectant mothers.<sup>70</sup> In *Guatemala*, which accepted Convention No. 89 in 1952 and is still bound by its provisions, the prohibition of night work for women has been deleted by virtue of a 1992 enactment amending the Labour Code which now prohibits only night work performed by minors.<sup>71</sup> In *Panama*, it appears that national legislation has never given effect to the provisions of Convention No. 89 since the ratification of the said instrument in 1970.<sup>72</sup> In the *Dominican Republic*, which has been bound by Convention No. 89 since 1953, the general prohibition on women's night work has been lifted under the new Labour Code adopted in May 1992.<sup>73</sup> In *Comoros*,

previously regulated the prohibition of night work for women. In response to a series of commentaries formulated by the Committee of Experts in the last ten years, the Government has reaffirmed that according to the new Federal Constitution any protection specifically accorded to women workers, except for reasons of maternity and breastfeeding, would amount to discrimination, while in a letter received on 13 September 1990 the Government had communicated its intention to denounce Convention No. 89.

<sup>68</sup> In its 1993 report under art. 22 of the ILO Constitution, the Government has reiterated that the practical application of the Convention has ceased, while in replying to a 1994 observation by the Committee of Experts it indicated that all restrictions to employment of women at night had been removed from the Mine Health and Safety Act, 1996, the Basic Conditions of Employment Act, 1997, and the Labour Relations Act, 1995, and announced its intention to denounce Convention No. 89 in 2001.

<sup>69</sup> The Government has announced its intention to denounce Convention No. 89 and the Protocol of 1990 following the legislative amendments inspired by the provisions of Convention No. 171.

<sup>70</sup> Act No. 213 of 29 June 1993, as amended by Act No. 496 of 22 August 1995, promulgating the Labour Code, arts. 128, 130.

<sup>71</sup> Decree No. 1441 of 5 May 1961 to promulgate the consolidated text of the Labour Code, as amended by Decree No. 64-92 of 2 December 1992 regarding the reform of the Labour Code, art. 148.

<sup>72</sup> In reply to repeated comments made by the Committee in previous years, the Government has indicated that it is examining the possibility of denouncing the Convention for economic and social reasons.

<sup>73</sup> Act No. 16-92 of 29 May 1992 promulgating the Labour Code, art. 231. The Government has reported that the National Congress has approved the denunciation of the Convention at the

Convention No. 89, ratified in 1978, has ceased to apply since the adoption of the Labour Code of 1984 which repealed earlier legislation and no longer prohibits night work for women.<sup>74</sup> Similarly, the Government of *Zambia* enacted new legislation in 1991 abolishing the ban on women's night work and yet it is still party to Convention No. 89.<sup>75</sup> The Government of *Malawi*, which continues to be bound by Convention No. 89, has reported that, under the new Employment Act, No. 6 of 2000, which came into effect on 1 September 2000, the prohibition on women's night work was removed so that women are free to choose whether to work at night or not. In the case of *Burundi*, which is a party to Conventions Nos. 4 and 89 since 1963, the new Labour Code of 1993 attaches primary importance to the principle of equality of opportunity and treatment and therefore omits any explicit prohibition against the employment of women during the night. The Government of *Benin* has reported that, under the new Labour Code adopted in 1998, women are no longer prohibited from working at night, which implies that Conventions Nos. 4 and 41 ratified in 1960 have ceased to apply. Similar is the situation in *Côte d'Ivoire* where effect is no longer given to Conventions Nos. 4 and 41 following the adoption of a new Labour Code in 1995.<sup>76</sup> The Government of *Suriname*, which ratified Convention No. 41 in 1976, has indicated that the Convention was no longer implemented since the prohibition on night work for women was lifted in 1983.<sup>77</sup> The Government of *Argentina*, for which Convention No. 41 is still in

expiration of the current period of ten years when the Convention will again be open to denunciation.

<sup>74</sup> Labour Code, Law No. 84-018/PR of 18 February 1984, art. 119. The Labour Code provides that women and children must have at least 12 hours of rest between workdays, and that the specific conditions of night work for women and children will be laid down in laws to be adopted separately. The Government has reported that industry is practically non-existent and that most women working during the night are employed in hotels or hospitals.

<sup>75</sup> Employment of Women, Young Persons and Children (Amendment) Act No. 4 of 6 September 1991, s. 6. In its last report under art. 22 of the ILO Constitution, the Government has stated that the protective role of the Convention has become an instrument of discrimination against women. It also informed that, after consultations with the most representative organizations of employers and workers, it was mutually agreed to denounce the Convention and that the formal instrument of denunciation is expected to be deposited in the year 2001.

<sup>76</sup> Act No. 95-15 of 12 January 1995 establishing the Labour Code, arts. 22.2, 23.1, and Act No. 96-204 of 7 March 1996 regarding night work, art. 4. The Government has stated that the prohibition of night work for women which was heretofore deemed to be a measure of protection is now seen as discriminatory in nature and an unwarranted barrier to women's access to employment.

<sup>77</sup> Decree E-41 of 12 September 1983 repealed the prohibition of night work for women provided for under s. 20 of the Labour Act of 1963. For the last 15 years, the Committee of Experts has been drawing the Government's attention to this situation of legal uncertainty and the need for remedial action. In its latest report under art. 22 of the ILO Constitution on the application of Convention No. 41, the Government stated that the possibility of denunciation of the Convention was still under consideration.

force, reported that new legislation was enacted in 1991 abolishing the general prohibition of night work for women.<sup>78</sup> The Government of *Estonia*, which is still bound by Convention No. 41 ratified in 1935, recognized the incongruity between national legislation and the provisions of the Convention but considered that the ban on night work of women was not applicable and realistic nowadays. In the case of *Lithuania*, national law and practice have substantially departed from the outright prohibition prescribed under Convention No. 4, to which Lithuania has been a party since 1931, without the said instrument having as yet been denounced. The Government of *Cuba* has ceased to give effect to Convention No. 4 while still formally bound by its provisions.<sup>79</sup> In like manner, in *Nicaragua*, which has been a party to Convention No. 4 since 1934, labour legislation contains no provision banning night work of women.<sup>80</sup>

**93.** With respect to the situation described in the preceding paragraph, the Committee wishes to express its serious concern over what appears to be an ongoing pattern of non-compliance with established procedures relating to the acceptance of international labour Conventions. In the interest of preserving a coherent body of international labour standards and giving full meaning to the Organization's supervisory mechanisms, the Committee would strongly appeal to certain member States to harmonize their legislation in that respect. The significance and implications of the growing tendency among States parties to Conventions Nos. 4, 41 and 89 to no longer give them effect cannot be underestimated; yet, the Committee considers it of critical importance to recall that it is not sufficient to invoke the principle of non-discrimination in employment and occupation or the principle of equality of treatment to nullify the obligations incumbent upon a member State by virtue of its formal acceptance of an international Convention.

<sup>78</sup> In January 1992, following the adoption of the Employment Law No. 24.013 of 13 November 1991, art. 26 of which deletes art. 173 of the Labour Contract Law No. 20.744 of 13 May 1976, the Government of Argentina communicated its instrument of denunciation of Conventions Nos. 4 and 41. The denunciation of Convention No. 41 could not be registered, however, as the Convention was not open to denunciation at that time.

<sup>79</sup> In its latest report submitted under art. 22 of the ILO Constitution, the Government of Cuba has expressed the view that it will eventually have to withdraw from Convention No. 4 on the same grounds as those invoked in December 1991 for the denunciation of Convention No. 89.

<sup>80</sup> Labour Code, Act No. 185 of 30 October 1996, art. 138. The Committee of Experts has been requesting the Government for many years to take the necessary measures to ensure that national laws are consistent with the international commitments made. In its latest report under art. 22 of the ILO Constitution on the application of Convention No. 4, the Government stated that the Ministry of Labour, through its Division of International Labour Affairs and Technical Cooperation and with the participation of public institutions and the most representative employers' and workers' organizations, has undertaken a nationwide consultation to examine the possibility to ratify either Convention No. 171, or Convention No. 89 and its Protocol, while denouncing Convention No. 4, and that the conclusions of such consultation are now being reviewed.

## II. General prohibition on night work

94. A few countries have enacted legislation providing for a general ban on night work for all workers. In *Belgium*,<sup>81</sup> and *Switzerland*,<sup>82</sup> for instance, workers are generally prohibited from working during the night. Derogations to the prohibition are only possible subject to authorization, while workers may not be required to perform night work without their consent. Likewise, the labour laws of *Barbados*<sup>83</sup> prohibit night work for both men and women workers in any industrial undertaking unless the employer obtains a certificate from the chief labour officer for that purpose. In *Sweden*,<sup>84</sup> night work is basically prohibited as national laws provide that all employees must be afforded free time for nightly rest including the hours between midnight and 5 a.m. Deviations are possible where certain types of work, as a consequence of the nature of the work, the needs of the general public, or other special circumstances, must be continued during the night. In *Norway*,<sup>85</sup> night work is generally prohibited except in specific branches such as transport, medical institutions, hostelry and catering, and telecommunications. Night work is also permissible by agreement with elected union representatives or by permission of the labour inspection, especially in cases of heavy workload, unforeseeable events or imperative need.

95. In several countries, no distinction is made between male and female workers in terms of access to night employment, so that the same restrictions, if any, apply to workers of both sexes. These are most often restrictions designed to protect workers for medical reasons or on account of special family responsibilities. In *Lithuania*,<sup>86</sup> for instance, night work is not permitted for

<sup>81</sup> Labour Act of 16 March 1971, as amended by Act of 17 February 1997 on night work, ss. 35(1), 36, 37, and Collective Agreement No. 46 of 23 March 1990 concerning night work, art. 3(1). Provided that the nature of the work or activity demands it, night work is permitted inter alia in hotels, restaurants, press, travel agencies, gas stations, power plants, shipyards, pharmacies, medical establishments, bakeries and agricultural undertakings.

<sup>82</sup> Federal Labour Act of 13 March 1964, as amended through Federal Act of 20 March 1998, arts. 16, 17, 17e, and Order No. 1 of 10 May 2000 relative to Federal Labour Act, arts. 27, 28. Regular night work is authorized only when this is indispensable for technical or economic reasons, while temporary night work is authorized in the case of established urgent need. When necessary, an employer assigning workers to regular night work has to take appropriate measures for their protection such as transport arrangements and resting, food or childcare facilities.

<sup>83</sup> Employment (Miscellaneous Provisions) Act of 24 March 1977, art. 4. Before issuing the certificate authorizing night work, the chief labour officer must satisfy himself that: (i) adequate transportation is available for transporting employees to their place of work, and to their homes within a reasonable time after work; (ii) the employer has provided proper rest-room facilities for eating meals at the place of employment; and (iii) adequate intervals for rest and meal time are afforded to those employees.

<sup>84</sup> Hours of Work Act (1982:673) of 24 June 1982, s. 13.

<sup>85</sup> Act No. 4 of 4 February 1977 respecting workers' protection and the working environment, as subsequently amended, last by Act No. 19 of 28 February 1997, ss. 42, 43.

<sup>86</sup> Law on Labour Protection No. I-266 of 7 October 1993, art. 45.

persons who are not allowed to work at night according to medical conclusions, while it is prohibited to assign night work, without the employee's prior consent, to male or female employees who are single parents or custodians of children who are under the age of 8, or to disabled persons, provided that such kind of work is not forbidden for them by the commission establishing the level of disability. In *South Africa*, according to the Basic Conditions of Employment Act which regulates night work, from 6 p.m. to 6 a.m. the next day, an employer may only require or permit an employee to work if the employee agrees and if the employee is compensated by an allowance or a reduction in hours and transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift. Furthermore, an employer who requires employees to perform work on a regular basis after 11 p.m. and before 6 a.m. must inform the employee of the health and safety hazards involved and of the employee's right to undergo a medical examination. In the *Netherlands*<sup>87</sup> and *Spain*,<sup>88</sup> when an occupational medical examination indicates that a worker's health problems are linked to night work, the employer must transfer the worker concerned to day work within a reasonable period. In *Slovenia*, single parents of a child under 7 years of age, a severely ill child, or a mentally or physically handicapped child, shall only be obliged to perform night work upon their prior written consent. In *Italy*,<sup>89</sup> night work may not be compulsorily performed: (i) by a female worker who is the mother of a child under the age of 3, or by the father who is living with the mother; (ii) by a female or male worker who is the sole parent having custody of a son or daughter under the age of 12 who is living with her/him; (iii) by a female or male worker who is responsible for the care of a disabled person within the meaning of relevant laws. In *Estonia*,<sup>90</sup> employees who are not allowed to work during night time on medical grounds, as well as persons taking care of disabled persons, persons raising motherless disabled children or children under 14 years of age, guardians of children under 14 years of age, and guardians or custodians of disabled children, may only be employed on night shifts with their consent. In *Belarus*,<sup>91</sup> the *Russian Federation*<sup>92</sup> and *Ukraine*,<sup>93</sup> disabled persons may be recruited for night work only with their consent and on condition that such work has not been prohibited according to medical

<sup>87</sup> Working Time Act of 23 November 1995, art. 4:9.

<sup>88</sup> Royal Legislative Decree No. 1/95 of 24 March 1995 regarding the Workers Statute Law, art. 36(4).

<sup>89</sup> Act No. 25 of 5 February 1999 on provisions for the fulfilment of obligations deriving from Italy's membership of the European Union – Community Law 1998, art. 5(2).

<sup>90</sup> Working and Rest Time Act of 15 December 1993, ss. 19(2-4), 8.

<sup>91</sup> Labour Code of 26 July 1999 (Text No. 432), ss. 117(5), 271(4), 287.

<sup>92</sup> Labour Code of 9 December 1971, as amended up to 30 April 1999, arts. 48, 172-1.

<sup>93</sup> Labour Code of 11 April 1994, arts. 55, 186-1.

recommendations. Furthermore, working fathers who are raising children alone (because the mother has died or lost parental rights, is hospitalized, or for other reasons), as well as legal guardians of minors, are entitled to the same guarantees enjoyed by working mothers in connection with maternity, including the prohibition of night work. In *Bulgaria*,<sup>94</sup> night work is generally prohibited to employees undergoing rehabilitation, except on their own consent and only when such employment is not detrimental to their health, and to employees who are continuing their education while under employment. In *Japan*,<sup>95</sup> under a legislative revision which entered into force on 1 April 1999, workers who take care of children under elementary school age, or of other family members in need of care due to injury, sickness or physical or mental disability, may not be employed between 10 p.m. and 5 a.m. if they so request.

**96.** In other countries, night work restrictions pertain to the nature of specific activities rather than to the personal needs of the worker. In *Haiti*,<sup>96</sup> night work may only be authorized for those services which cannot be provided during daytime, and may not be imposed on workers for work which can normally be performed during the day. In *Finland*,<sup>97</sup> night work is allowed mainly in periodic work; in work which has been divided into three or more shifts; in the maintenance and cleaning of public roads, streets, and airfields; in pharmacies; at newspapers and magazines, news and photographic agencies and in other media work, and in the delivery of newspapers; in specific agricultural and farm works; with the employee's consent in bakeries.

**97.** In some countries, there is no prohibition on the employment of women at night as legislation does not distinguish between night and day work or does not apply different labour standards to male and female workers. This is the case in *Australia*,<sup>98</sup> *Botswana*,<sup>99</sup> *Burundi*, *Canada*, *Chile*, *Cuba*,<sup>100</sup>

<sup>94</sup> Labour Code of 24 March 1986, as amended to 1996, art. 140(4).

<sup>95</sup> Law No. 76 of 15 May 1991 concerning the welfare of workers who take care of children or other family members including childcare and family care leave, art. 16-2.

<sup>96</sup> Labour Code, Decree of 24 February 1984, art. 120.

<sup>97</sup> Hours of Work Act No. 605 of 1996, ss. 26, 27. An employee may not be required by the work schedule to work more than seven consecutive night shifts.

<sup>98</sup> The Government has reported that a very small number (estimated at less than 1 per cent) of awards and agreements at the level of states and territories contain provisions prohibiting female employees from working during a period of night. In Queensland, for instance, under the Bacon Manufacturing and Meat Preserving Award, female employees are not allowed to work on night shifts, while under the Retail Industry Interim Award females under 18 years of age may not be required to work after 9 p.m. unless an adult is present and transport is provided where normal or public transport is not available.

<sup>99</sup> The Employment (Amendment) Act, No. 26 of 1992, removed s. 116 of the Employment Act, No. 29 of 1982, Ch. 47:01 which restricted night work by women.

<sup>100</sup> Protection and Hygiene at Work Law, No. 13 of 28 December 1977, art. 37. Women may not be employed in those jobs that could prove particularly harmful in view of women's specific physical and physiological characteristics, taking also into account women's important social

*Dominican Republic,*<sup>101</sup> *Ecuador,*<sup>102</sup> *El Salvador,*<sup>103</sup> *Ethiopia,*<sup>104</sup> *Mexico,*<sup>105</sup> *New Zealand,*<sup>106</sup> *Peru,*<sup>106</sup> *Qatar,*<sup>107</sup> *Seychelles,* *Singapore,* *Uruguay,*<sup>108</sup> *Viet Nam*<sup>109</sup> and *Zimbabwe.*

### III. Special protection for women before and after childbirth

98. In most of the countries where all prohibitions or restrictions on women's employment during the night have been removed, as part of an effort to promote equal opportunities and ensure respect for the principle of non-discrimination between men and women at work and in employment, specific regulatory regimes on night work continue to apply for only two categories of workers with special needs, namely expectant or breastfeeding mothers and young persons. The rationale behind such legislation is the concern and awareness that women workers, because of their unique reproductive function, are more exposed to the hazards of night work during pregnancy and immediately after confinement which would call for well-circumscribed exceptions from the principle of non-discrimination and equality of treatment between men and women. Some of those regulations lay down an absolute prohibition on night work whereas others provide for qualified restrictions and diverse exceptions. Generally speaking, the special protection for pregnant women and nursing mothers is not limited to those employed in industrial undertakings but applies to all sectors of economic activity.

mission as mothers. In addition, the Labour Code specifically provides that pregnant women and women at the reproductive age may not be employed in activities which could affect their gynaecological system, reproductive function or the normal evolution of pregnancy; see Labour Code of 28 December 1984, art. 213.

<sup>101</sup> Act No. 16-92 of 29 May 1992 promulgating the Labour Code, art. 231.

<sup>102</sup> Labour Code of 29 September 1997, arts. 49, 79.

<sup>103</sup> Labour Code of 15 June 1972, as amended up to 1994, art. 161.

<sup>104</sup> Labour Proclamation No. 42/1993, art. 87(1). It is prohibited, however, to employ women on types of work that may be listed by the Minister as particularly arduous or harmful to their health.

<sup>105</sup> Political Constitution of the United Mexican States, art. 4, and Federal Labour Act, as amended up to 1 October 1995, art. 164.

<sup>106</sup> Constitution of 1993, arts. 2(2), 26.

<sup>107</sup> Women's employment is not addressed in labour laws in general, and thus there are no provisions specifically prohibiting night work for female workers. Yet, the Government has reported that in practice women are not employed after 9 p.m. except in institutions such as hospitals, medical centres, hotels and restaurants.

<sup>108</sup> Decree No. 37/997 of 14 February 1997, art. 1.

<sup>109</sup> Labour Code of 23 June 1994, art. 111(1).

99. In some countries, labour legislation lays down a stringent prohibition on night work for all expectant mothers throughout their pregnancy and for nursing mothers during a specified period after childbirth which may vary from one to three years. In *Hungary*<sup>110</sup> and *Italy*<sup>111</sup> for instance, women may not be employed at night between midnight and 6 a.m. from the certification of pregnancy until the child reaches 1 year of age, while in *Slovakia*,<sup>112</sup> a pregnant woman or a woman taking care of a child younger than 1 year of age may not engage in night work under any circumstances, even if it is night-time work which, as an exception, women are permitted to perform. In *Luxembourg*,<sup>113</sup> pregnant women and breastfeeding mothers may not work between 10 p.m. and 6 a.m. throughout pregnancy and during the 12-week period following delivery. In *Albania*,<sup>114</sup> *Eritrea*,<sup>115</sup> *Estonia*,<sup>116</sup> *Ethiopia*,<sup>117</sup> and *Thailand*,<sup>118</sup> it is forbidden to have a pregnant woman working during the night. In *Indonesia*,<sup>119</sup> where women may under certain conditions be authorized to work at night, labour laws lay down an unconditional prohibition of night work for pregnant and breastfeeding female workers. In *Panama*,<sup>120</sup> the employer is under the obligation to take all necessary measures to ensure that pregnant workers are not engaged in night work, that is work performed between 6 p.m. and 6 a.m. In

<sup>110</sup> Act No. 22 of 3 March 1992 on the Labour Code, art. 121(1). This is an absolute prohibition which may not be lifted even at the employee's express request.

<sup>111</sup> Act No. 25 of 5 February 1999 on provisions for the fulfilment of obligations deriving from Italy's membership of the European Union – Community Law 1998, art. 5(1). The prohibition relates to the period from midnight to 6 a.m. As regards women workers who are normally assigned to dangerous, tiring or unhealthy work, they have to be transferred to other duties from the first day of pregnancy up to the seventh month after childbirth. Should this not be possible, the competent inspection service may authorize their absence from work during which period they will be entitled to the corresponding maternity benefit, or 80 per cent of pay.

<sup>112</sup> Act No. 451/1992 providing for the Labour Code, s. 156(3).

<sup>113</sup> Act of 3 July 1975 on maternity protection, as amended by Act of 7 July 1998, art. 4.

<sup>114</sup> Labour Code, Act No. 7961 of 12 July 1995, arts. 104, 108. It is also prohibited to employ women during day or night 35 days before the presumed date of confinement, and 42 days after confinement.

<sup>115</sup> Labour Law No. 8/1991, art. 32(3).

<sup>116</sup> Working and Rest Time Act of 15 December 1993, s. 19(2), (3). A woman raising a disabled child or a child under 14 years of age may be assigned to night work only with her consent.

<sup>117</sup> Labour Proclamation No. 42/1993, art. 87(3).

<sup>118</sup> Labour Protection Act (B.E.2541) of 12 February 1998, art. 39. In addition, when women are employed during the night in works which are hazardous to their health and safety, the employer may be ordered by the Director-General of the Labour Department, upon the recommendation of the labour inspectorate, to change or reduce their working hours.

<sup>119</sup> Law on Manpower Affairs, No. 25 of 3 October 1997, art. 99, and Ministerial Regulation No. 04/MEN/1989 on procedures to employ women workers at night, art. 3(a).

<sup>120</sup> Labour Code adopted by Decree No. 252 of 30 December 1971, as amended to 1995, art. 116.

*Cuba*,<sup>121</sup> women are exempted from night shifts during pregnancy and may be transferred to another occupation with a previous medical report. Similarly, in *Chile*,<sup>122</sup> pregnant women normally employed in work considered detrimental to their health have to be assigned, without any wage reduction, to other duties that involve no risk to their health and, in this respect, work carried out during night time is considered as detrimental to health. In *Mexico*<sup>123</sup> and *Paraguay*,<sup>124</sup> pregnant and breastfeeding workers may not be engaged in industrial work during the night, dangerous or unhealthy work, or work in commercial establishments after 10 p.m., when their health or that of their child might be affected, without any detriment to their wages, benefits or rights. In *Azerbaijan*,<sup>125</sup> *Belarus*,<sup>126</sup> *Bulgaria*,<sup>127</sup> *Latvia*,<sup>128</sup> *Lithuania*,<sup>129</sup> *Republic of Moldova*,<sup>130</sup> *Russian Federation*<sup>131</sup> and *Ukraine*,<sup>132</sup> it is forbidden to assign to night work pregnant women and women who have children under 3 years of age. In most of these countries, women workers with children aged between 3 and 14 years, or mothers taking care of disabled children under 14 years of age may be employed to do night work only with their consent. Similarly, in *Poland*<sup>133</sup> pregnant women are not allowed to work at night, while women taking care of children up to 4 years of age may not engage in night work unless they give their

<sup>121</sup> Protection and Hygiene at Work Law, No. 13 of 28 December 1977, art. 40. See also Labour Code of 28 December 1984, art. 213.

<sup>122</sup> Labour Code of 7 January 1994, art. 202(c).

<sup>123</sup> Federal Labour Act, as amended up to 1 October 1995, art. 166.

<sup>124</sup> Act No. 213 of 29 June 1993, as amended by Act No. 496 of 22 August 1995, promulgating the Labour Code, art. 130.

<sup>125</sup> Labour Code of 1 February 1999, arts. 79(1), 98(1), 240(1), 242(2), 243(4).

<sup>126</sup> Labour Code of 26 July 1999 (Text No. 432), ss. 117(4), 170, 263(1), (2).

<sup>127</sup> Labour Code of 24 March 1986, as amended to 1996, art. 140(4).

<sup>128</sup> Labour Code, as amended to 25 October 1994, arts. 51(2), 170, 171-1, 176.

<sup>129</sup> Law on Labour Protection, No. I-266 of 7 October 1993, art. 63.

<sup>130</sup> Labour Code, Law of 25 May 1973, as amended up to 23 July 1998, art. 170.

<sup>131</sup> Labour Code of 9 December 1971, as amended up to 30 April 1999, arts. 48, 162. Under art. 252 of the new draft Labour Code now tabled before the State Dumas, night work is prohibited only for pregnant women, whereas women with children aged under 14 years may be employed in night work only with their consent.

<sup>132</sup> Labour Code of 11 April 1994, arts. 176, 177, 184.

<sup>133</sup> Labour Code, Act of 26 June 1974, as amended up to 1996, arts. 178, 189-1. The prohibition of night work when raising a child up to 4 years of age applies also to male employees, provided that when both parents or guardians are employed such right may be exercised only by one of them.

consent. In *Austria*<sup>134</sup> and *Germany*,<sup>135</sup> maternity protection laws lay down a complete ban on night work of pregnant women and nursing mothers between 8 p.m. and 6 a.m.

**100.** In some countries, the prohibition is not absolute in the sense that, if an expectant or nursing mother requests an assignment to day work, the employer is obliged to comply with her request. This is the case, for instance, in *Belgium*,<sup>136</sup> the *Czech Republic*<sup>137</sup> and *Japan*.<sup>138</sup> In *Israel*,<sup>139</sup> as from her fifth month of pregnancy a woman employee may notify her employer in writing that she does not agree to work at night, following which the employer is obliged to assign her to other duties.

**101.** In a few countries, the prohibition covers only part of the pregnancy period, usually the final two months before delivery. In *China*<sup>140</sup> and *Viet Nam*,<sup>141</sup> female workers as from their seventh month of pregnancy, and breastfeeding mothers during a 12-month period after childbirth, may not be required to work on night shifts or overtime. In *Switzerland*,<sup>142</sup> pregnant women may not be employed between 8 p.m. and 6 a.m. during the eight weeks

<sup>134</sup> Maternity Protection Act of 17 April 1979, s. 6(2), (3). However, pregnant women and nursing mothers employed in transport, musical and theatrical performances, entertainment and festival activities, film-making and cinemas, medical and nursing establishments or in multiple shift undertakings, may work until 10 p.m., and upon specific authorization of the labour inspectorate until 11 p.m., provided that the working shift is immediately followed by an uninterrupted rest period of 11 hours.

<sup>135</sup> Federal Act on Maternity Protection of 17 January 1997, s. 8(1), (3), (6). By way of exception, women in the first four months of pregnancy and nursing mothers may be employed in the hotel and catering sector until 10 p.m. and as performers in musical, theatrical and similar performances until 11 p.m. They can also milk livestock from 5 a.m. onwards in agriculture. The supervisory authorities may allow for further exceptions in individual cases but the protection of pregnant women and nursing mothers must be guaranteed in every case.

<sup>136</sup> Labour Act of 16 March 1971, as amended, s. 43. A pregnant worker may request to be exempted from night duties, i.e. work between 8 p.m. and 6 a.m., during the eight weeks before the expected date of childbirth without any formality, and upon the production of a medical certificate during the remaining period of pregnancy as well as during the four weeks following the end of the maternity leave.

<sup>137</sup> Labour Code, Act No. 65/1965, as amended up to 1996, s. 153(1).

<sup>138</sup> Labour Standards Law, No. 49 of 1947, as amended through Law No. 107 of 9 June 1995, art. 66(3).

<sup>139</sup> Employment of Women Law, No. 5714-1954, s. 10.

<sup>140</sup> Labour Act of 5 July 1994, ss. 61, 63, and Decree of 28 June 1988 of the State Council adopting regulations governing labour protection for female staff members and workers, art. 7.

<sup>141</sup> Labour Code of 23 June 1994, art. 115(1).

<sup>142</sup> Federal Labour Act of 13 March 1964, as amended through Federal Act of 20 March 1998, arts. 35a(4), 35b(1). When possible, pregnant women normally working between 8 p.m. and 6 a.m. have to be assigned to day work. The same applies to women workers during the period between the eighth and sixteenth week after delivery.

preceding delivery. Similarly, in *Namibia*,<sup>143</sup> female employees may not be required or allowed to engage in night work during a period of eight weeks before the expected date of their confinement and eight weeks after such confinement or during such other period certified by a medical practitioner to be necessary for their health or that of their child. In *Nicaragua*,<sup>144</sup> women may not be engaged in night work after the completion of the sixth month of pregnancy, while in *Romania*,<sup>145</sup> pregnant women as from the sixth month as well as breastfeeding mothers may not be employed at night. Similarly, in *Seychelles*,<sup>146</sup> a female worker from the time she is six months pregnant and up to three months after her confinement, may not be employed at night between the hours 10 p.m. and 5 a.m.

**102.** In a few countries, a certain degree of flexibility has been built in maternity protection legislation allowing for exemptions from the prohibition basically upon the worker's request or consent. In *Slovenia*,<sup>147</sup> for instance, a female worker may not, in principle, perform night work during pregnancy and until her child reaches the age of 2 years. However, a female worker with a child under 1 year of age may perform work during the night on the basis of her written request, while female workers who have a child from 1 to 3 years old may be given work at night only with their previous consent. In the *Netherlands*,<sup>148</sup> women may not be required to work night shifts during pregnancy or for six months after confinement unless the employer can present convincing reasons why he/she cannot reasonably be expected to comply with such requirement. In *Mozambique*,<sup>149</sup> during the period of pregnancy and following confinement, working women are entitled to refuse to perform night work or overtime, and may not be moved from their usual workplace, as from the third month of pregnancy, unless they so request or it is in the interests of their condition. In *Singapore*,<sup>150</sup> a pregnant female worker is prohibited from

<sup>143</sup> Labour Act of 13 March 1992, s. 34(1).

<sup>144</sup> Labour Code, Act No. 185 of 30 October 1996, art. 52.

<sup>145</sup> Labour Code, Law No. 10 of 23 November 1972, art. 154.

<sup>146</sup> Conditions of Employment Regulations of 24 April 1991 (S.I. 34), s. 23(1). See also International Trade Zone (Conditions of Employment) Order of 31 January 1997 (S.I. 14), s. 18(1). The prohibition covers the period between 10 p.m. and 5 a.m. In addition, a female worker has the right to be transferred to other work or duties if at any time during pregnancy and up to three months after confinement she produces a medical certificate that a change in the nature of her work is necessary in the interest of her health or that of her child.

<sup>147</sup> Act on fundamental rights ensuing from labour relations, Text No. 921 of 28 September 1989, art. 40, and Labour Relations Act of 29 March 1990, art. 78.

<sup>148</sup> Working Time Act of 23 November 1995, arts. 4:5(5), 4:7.

<sup>149</sup> Act No. 8/98 of 20 July 1998, art. 75(1b).

<sup>150</sup> Employment (Female Workmen) Regulations, 1988, No. S 101 of 26 April 1988, art. 3(1).

working at night unless she has given her consent in writing, and she is not certified unfit by a medical practitioner to do night work.

**103.** A few countries have adopted a new occupational safety and health approach to protection of pregnant workers based on the understanding that a blanket prohibition of night work for pregnant women and nursing mothers after confinement may not always serve a meaningful purpose since many types of occupation do not involve any particular risk for the health of pregnant workers or workers who have recently given birth. This is principally the case of most EU Member States whose legislation reflects the principles set out in Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. The legislation in the *United Kingdom*,<sup>151</sup> for instance, does not prohibit new or expectant mothers from working on night shifts. The relevant regulations are based rather on assessment of risk and provide for mandatory appropriate action by the employer if a new or expectant mother supplies a medical certificate identifying night work per se as being a risk to her health. Such action could consist in the outright suspension of the new or expectant mother from work for as long as is necessary for her health or safety. The recently revised maternity protection legislation of *Spain*<sup>152</sup> reflects the same principle. The working conditions and hours of work, including night or shift work, of pregnant women and women who have recently given birth must be so adjusted that they do not affect the health of expectant or nursing mothers. If such measures of adaptation are not adequate or are impracticable, the female employee may be transferred to another job or function, while in some cases it may even prove necessary to suspend her contract. Similarly, the labour legislation of *Denmark*<sup>153</sup> and *Finland*<sup>154</sup> prescribes that during the performance of the work attention must be paid to the age of the employee, the person's level of knowledge, work ability and other

<sup>151</sup> Management of Health and Safety at Work (Amendment) Regulations, 1999, art. 17. The term "new or expectant mother" means an employee who is pregnant, who has given birth within the previous six months, or who is breastfeeding. National legislation also confers a right to remuneration where a woman has been suspended on maternity grounds and gives her the right to make a complaint to an employment tribunal if her employer has failed to offer her any available suitable alternative work, or if the employer has failed to pay remuneration during a maternity suspension; see Employment Rights Act, 1996, ss. 68, 70. In addition, it would be unlawful for an employer to dismiss an employee or subject her to detriment because he is required to suspend her from work on maternity grounds; see Maternity and Parental Leave Regulations, 1999, arts. 19-20.

<sup>152</sup> Prevention of Labour Risks Law No. 31/95 of 8 November 1995, art. 26(1), as amended by Law No. 39/99 of 5 November 1999 regarding the reconciliation of work and family life, art. 10. See also Royal Legislative Decree No. 1/95 of 24 March 1995 regarding the Workers Statute Law, art. 45(1d).

<sup>153</sup> Order No. 867 of 13 October 1984, as amended by Order No. 1117 of 17 December 1997, s. 8.

<sup>154</sup> Occupational Safety and Health Act, s. 10(a).

factors, and in this connection highly sensitive risk groups, including pregnant and breastfeeding employees, must be protected from risks that are especially hazardous to them. The employer must, therefore, assess whether the individual employee is exposed to effects that may imply a hazard to pregnancy or breastfeeding, and should prevent such hazards either through technical measures or measures relating to the planning of the work and the design of the workplace, including changes in working hours and limitations of night work. Likewise, in the *Dominican Republic*,<sup>155</sup> where as a result of pregnancy or childbirth the work performed by a woman is harmful to her health or that of her child, and this fact is certified by a medical practitioner, the employer must provide a change of work.

**104.** A similar situation prevails in *Australia*<sup>156</sup> where, according to the regulatory approach to the issue of occupational health protection of a pregnant woman or a recent mother which was adopted in Victoria, there is a general duty of care for the employer. If there is a risk to the health and safety of a pregnant woman or recent mother, the employer is required to eliminate, or control, that risk so far as is practicable. The term “practicable” is defined as having regard to the severity of the hazard or risk in question, the state of knowledge about the hazard or risk, the availability and suitability of ways to remove or mitigate the hazard or risk, and the cost of removing or mitigating the hazard or risk. According to labour legislation in *Greece*,<sup>157</sup> pregnant women working during pregnancy, after childbirth, or during a breastfeeding period of up to one year after childbirth and normally employed on a night shift, have to be assigned to a day work position on condition that they supply a medical certificate attesting that such a measure would be necessary for reasons related to their health and security. If the shift from night to day work is practically or objectively impossible, the women concerned have to be dispensed from work. In *Portugal*,<sup>158</sup> women who are pregnant, have recently given birth or are breastfeeding are entitled to be exempted from performing night work: (i) for a

<sup>155</sup> Act No. 16-92 of 29 May 1992 promulgating the Labour Code, art. 235.

<sup>156</sup> Occupational Health and Safety Act, 1985. Analogous legislation has been adopted in other Australian jurisdictions. Most federal awards contain a non-night work specific standard of protection for employees who are eligible for maternity leave which provides that where an employee is pregnant and in the opinion of a registered medical practitioner illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee may, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave. If the transfer to a safe job is not practicable, the employee may elect or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

<sup>157</sup> Presidential Decree No. 176/97 respecting measures to improve the security and health at work of working women during pregnancy, after birth, or during breastfeeding, art. 7.

<sup>158</sup> Act No. 4/84 of 5 April 1984 concerning maternity and paternity protection, as amended by Act No. 142/99 of 31 August 1999, art. 22(1).

period of 112 days before and after childbirth; and (ii) during the remaining period of pregnancy or during the entire period of breastfeeding upon presentation of a medical certificate certifying that this is necessary for their health or for that of their child.

**105.** Finally, it may be noted that the legislation of some of the countries where women's night work is still generally prohibited recognizes special protection to pregnant female workers. The labour laws of *Angola*,<sup>159</sup> for instance, specifically provide that night work of pregnant women may not be authorized under any circumstances, even in those exceptional situations such as *force majeure* or risk of deterioration of raw materials where the prohibition on night work ceases to apply.

#### **IV. General prohibition of night work for girls and young women**

**106.** In most countries there is an outright prohibition on the night employment of young persons, thus including girls and young women, under 18 years of age. This is the case in *Albania*,<sup>160</sup> *Argentina*,<sup>161</sup> *Austria*,<sup>162</sup> *Azerbaijan*,<sup>163</sup> *Barbados*,<sup>164</sup> *Belarus*,<sup>165</sup> *Belgium*,<sup>166</sup> *Belize*,<sup>167</sup> *Benin*,<sup>168</sup>

<sup>159</sup> General Labour Act, No. 2/2000 of 11 February 2000, art. 272(1c).

<sup>160</sup> Labour Code Act, No. 7961 of 12 July 1995, art. 101.

<sup>161</sup> Labour Contract Law, No. 20.744 of 13 May 1976, art. 190.

<sup>162</sup> Federal Act of 1 July 1948 respecting the employment of children and young persons, as last amended by Act of 6 November 1997 (Text No. 126), s. 17. The prohibition covers the period between 8 p.m. and 6 a.m. However, employment of young workers who are at least 16 years of age is allowed in multiple shift undertakings with weekly shift changes; in catering establishments up to 10 p.m.; for musical, theatrical or other similar performances and film, television or sound recording sessions up to 11 p.m. Under certain conditions, the possibility of night duty assignment is also provided for apprentice bakers who have reached 15 years of age and for young persons undergoing professional health and nursing training.

<sup>163</sup> Labour Code of 1 February 1999, art. 254(1). For employees under the age of 18, night work is defined as the hours between 8 p.m. and 7 a.m.

<sup>164</sup> Employment (Miscellaneous Provisions) Act of 24 March 1977, arts. 7, 13. The prohibition on night work extends from 6 p.m. and 7 a.m.

<sup>165</sup> Labour Code of 26 July 1999 (Text No. 432), ss. 117(4), 276.

<sup>166</sup> Labour Act of 16 March 1971, as amended by Act of 17 February 1997 on night work, ss. 34bis, 34ter. By night work, in this regard, is understood any work performed between 8 p.m. and 6 a.m. Young workers above 16 years of age may exceptionally work until 11 p.m. in the case of imminent accident, urgent repair work, or unforeseen necessity with the prior consent of the workers' organization concerned. In any case, a minimum rest period of 12 consecutive hours must elapse between finishing work and returning to work in the case of young workers.

<sup>167</sup> Labour Act, Ch. 234, s. 161(1b).

<sup>168</sup> Law No. 98-004 of 27 January 1998 to establish a Labour Code, art. 153.

*Bolivia*,<sup>169</sup> *Botswana*,<sup>170</sup> *Brazil*,<sup>171</sup> *Bulgaria*,<sup>172</sup> *Burkina Faso*,<sup>173</sup> *Burundi*,<sup>174</sup>  
*Cameroon*,<sup>175</sup> *Central African Republic*,<sup>176</sup> *Chad*,<sup>177</sup> *Chile*,<sup>178</sup>  
*Colombia*,<sup>179</sup> *Costa Rica*,<sup>180</sup> *Côte d'Ivoire*,<sup>181</sup> *Czech Republic*,<sup>182</sup> *Democratic*

<sup>169</sup> Act No. 1403 of 18 December 1992 establishing the Minor's Code, art. 146, and Act No. 2026 of 27 October 1999 establishing the Code of Children and Adolescents, art. 147. See also Supreme Decree of 26 May 1939 to issue the Labour Code, art. 60, and Decree of 23 August 1943 regulating the General Labour Act, art. 53. The prohibition covers the period between 6 p.m. and 6 a.m. Regarding non-industrial occupations, minors under 18 years of age may not work during a period of 11 consecutive hours including the interval from midnight to 5 a.m.

<sup>170</sup> Employment Act of 1982, ss. 2, 109. However, young persons may exceptionally be required to work at night: (i) in the case of an emergency which could not reasonably have been foreseen and prevented, which is not of a periodical character and which interferes with normal operation of the undertaking; and (ii) if the young persons are so employed under a contract of apprenticeship or indenture to learn.

<sup>171</sup> Federal Constitution, as amended by the constitutional amendment No. 20 of 15 December 1998, art. 7(XXXIII).

<sup>172</sup> Labour Code of 24 March 1986, as amended to 1996, art. 140(4).

<sup>173</sup> Act No. 11-92/ADP of 22 December 1992 establishing the Labour Code, art. 83, and Decree No. 539/ITLS/HV of 29 July 1954 concerning the employment of children, arts. 3, 4.

<sup>174</sup> Labour Code, Decree No. 1/037 of 7 July 1993, s. 119.

<sup>175</sup> Labour Code, Law No. 92/007 of 14 August 1992, ss. 81, 82.

<sup>176</sup> Act No. 61-221 of 2 June 1961 establishing the Labour Code, art. 121, and Decree No. 3157 of 8 October 1951 concerning the employment of children, arts. 17, 18.

<sup>177</sup> Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code, arts. 205, 208.

<sup>178</sup> Labour Code of 7 January 1994, art. 18. The prohibition refers to work performed between 10 p.m. and 7 a.m. and applies to industrial and commercial undertakings, other than undertakings in which only members of the same family are employed. Also exempted from the prohibition are young workers over 16 years of age working in industrial and commercial undertakings of continuous operation, as specified by Ministerial Order.

<sup>179</sup> Labour Code, as amended by Law No. 13 of 4 January 1967, art. 4, and Code of Minors, Decree No. 2737/89, art. 242(4). However, young persons between 16 and 18 years of age may be authorized to work until 8 p.m. on condition that regular school attendance is not affected.

<sup>180</sup> Childhood and Adolescence Law No. 7739 of 6 January 1998, arts. 2, 95. See also Labour Code of 1943, as amended up to 1996, art. 88(a). The prohibition refers to a 12-hour period between 7 p.m. and 7 a.m.

<sup>181</sup> Act No. 95-15 of 12 January 1995 establishing the Labour Code, arts. 22.2, 22.3, and Act No. 96-204 of 7 March 1996 regarding night work, art. 4. The prohibition applies to the period of 12 consecutive hours from 6 p.m. to 6 a.m.

<sup>182</sup> Labour Code, Act No. 65/1965, as amended up to 1996, s. 166(1). As an exception, adolescents older than 16 years of age may perform night work not exceeding one hour, if such is necessary for reasons of vocational training.

*Republic of the Congo*,<sup>183</sup> *Dominica*,<sup>184</sup> *Ecuador*,<sup>185</sup> *El Salvador*,<sup>186</sup>  
*Estonia*,<sup>187</sup> *Ethiopia*,<sup>188</sup> *France*,<sup>189</sup> *Gabon*,<sup>190</sup> *Germany*,<sup>191</sup> *Ghana*,<sup>192</sup>

<sup>183</sup> Legislative Ordinance No. 67/310 of 9 August 1967 to establish a Labour Code, ss. 106, 107, and Order No. 68/13 of 17 May 1968 to lay down conditions of work for women and children, s. 27. The daily rest period for children under 18 years of age may not be less than 12 consecutive hours including an interval of not less than seven consecutive hours falling between 7 p.m. and 7 a.m.

<sup>184</sup> Employment of Women, Young Persons and Children Act, 1991, art. 7(1), (2a), (3). However, the prohibition does not apply to young persons over the age of 16 years employed in the manufacture of raw sugar, or in cases of emergencies which could not have been controlled or foreseen.

<sup>185</sup> Labour Code of 29 September 1997, art. 137.

<sup>186</sup> Labour Code of 15 June 1972, as amended by Decree No. 859 of 21 April 1994, art. 116.

<sup>187</sup> Working and Rest Time Act of 15 December 1993, s. 19(2).

<sup>188</sup> Labour Proclamation No. 42/1993, arts. 89(1), 91(1). The prohibition applies to young persons who have attained the age of 14 years but are under the age of 18 years and refers to work carried out between 10 p.m. and 6 a.m.

<sup>189</sup> Labour Code, arts. L.213-7, L.213-8, L.213-10 and R.117 bis-1. The prohibition refers to the eight-hour period between 10 p.m. and 6 a.m. Derogations from this rule may be accorded by the labour inspectorate to commercial establishments, places of entertainment, and to bakeries in relation to apprentices over 16 years of age whose work starts not earlier than 4 a.m. Young male workers between 16 and 18 years of age may also be exempted in case of necessity for the purpose of preventing imminent accidents or carrying out repair work.

<sup>190</sup> Act No. 3/94 of 21 November 1994 establishing the Labour Code, arts. 166, 167, 168(c), 169. However, young workers above 16 years of age may be employed during the night in certain industries of continuous operation such as the steel, glass or sugar industry.

<sup>191</sup> Youth Employment Protection Act of 12 April 1976, ss. 1, 14. The prohibition refers to work performed between 8 p.m. and 6 a.m. with some exceptions in certain fields. In no case may such persons be employed after 11.30 p.m. and before 4 a.m.

<sup>192</sup> Labour Decree, 1967, ss. 45(1), 47. Night, in this respect, means a period of 12 consecutive hours including the interval between 10 p.m. and 7 a.m. The general ban on night work of minors does not apply to young persons between 16 and 18 years of age, on condition that the written permission of the chief labour officer is first obtained, (i) in a case of emergency which could not have been controlled or foreseen, is not of a periodical character and interferes with the normal working of the establishment, and (ii) in a case of serious emergency, when the public interest demands it.

*Guatemala*,<sup>193</sup> *Guinea*,<sup>194</sup> *Guinea-Bissau*,<sup>195</sup> *Haiti*,<sup>196</sup> *Hungary*,<sup>197</sup> *Indonesia*,<sup>198</sup>  
*Japan*,<sup>199</sup> *Kenya*,<sup>200</sup> *Republic of Korea*,<sup>201</sup> *Kuwait*,<sup>202</sup> *Latvia*,<sup>203</sup>  
*Lebanon*,<sup>204</sup> *Libyan Arab Jamahiriya*,<sup>205</sup> *Lithuania*,<sup>206</sup> *Luxembourg*,<sup>207</sup>

<sup>193</sup> Decree No. 1441 of 5 May 1961 to promulgate the consolidated text of the Labour Code, as amended up to 1995, art. 148(c). The prohibition refers to the period between 6 p.m. and 6 a.m.

<sup>194</sup> Ordinance No. 003/PRG/SGG/88 of 28 January 1988 issuing the Labour Code, ss. 148, 149 and Decree No. 2791/MTASE/DNTLS/96 of 22 April 1996 respecting child labour, arts. 2(8), 10, 11. Young workers must have a minimum rest period of 12 hours between 6 p.m. and 6 a.m. The only possible exception relates to young persons between 16 and 18 years of age engaged in repair work in the case of an accident or imminent danger.

<sup>195</sup> General Labour Act No. 2/86 of 5 April 1986, art. 152. Night work may exceptionally be authorized for minors above 16 years of age for reasons of vocational training and on condition that their physical or mental well-being is not affected.

<sup>196</sup> Labour Code, Decree of 24 February 1984, art. 334. In this respect, the term night means a period of at least 12 consecutive hours. For minors under 16 years of age, this period comprises the interval between 10 p.m. and 6 a.m., while for those between 16 and 18 years of age it needs to cover an interval of at least seven consecutive hours between 10 p.m. and 7 a.m.

<sup>197</sup> Act No. 22 of 3 March 1992 on the Labour Code, art. 121(1).

<sup>198</sup> Law on Manpower Affairs, No. 25 of 3 October 1997, arts. 96(3b), 97(1c), and Act No. 1 of 6 January 1951, art. 4. Children may not be employed between 6 p.m. and 6 a.m., while young persons who have attained 14 years of age but are under 18 years of age are prohibited from working at certain times during the night except when this is part of job education and training.

<sup>199</sup> Labour Standards Law, No. 49 of 1947, as amended through Law No. 107 of 9 June 1995, art. 61(1). However the prohibition does not apply in the case of males who have attained 16 years of age and who are employed on shift work.

<sup>200</sup> Employment Act, No. 2 of 15 April 1976, s. 28(1).

<sup>201</sup> Labour Standards Act No. 5309 of 13 March 1997, art. 68. The prohibition does not apply, however, if the consent of the worker concerned and the approval of the Ministry of Labour have been obtained.

<sup>202</sup> Act No. 38 of 1964 regarding employment in the private sector, art. 21. No work may be performed between sunset and sunrise. However, according to arts. 28, 29 of the Bill to amend Act No. 38 of 1964 which is now in the process of adoption, young persons between the ages of 15 and 18 could not be employed between 9 p.m. and 6 a.m.

<sup>203</sup> Labour Code, as amended to 25 October 1994, arts. 51(1), 186.

<sup>204</sup> Labour Code, Law of 23 September 1946, as amended by Law No. 536 of 24 July 1996, arts. 23, 25. With the exception of vocational training and charity institutions, young persons may not be required to work from 7 p.m. to 7 a.m.

<sup>205</sup> Labour Code, Act No. 58-2970 of 1 May 1970, art. 94. The prohibition refers to the period between 8 p.m. and 7 a.m.

<sup>206</sup> Act No. I-266 of 7 October 1993 on labour protection (occupational safety), as amended to 3 November 1994, arts. 60, 61. Daily uninterrupted rest time for persons under 16 years of age must be at least 14 hours, and at least 12 hours for persons from 16 to 18 years of age. This rest time must be between the hours of 8 p.m. and 8 a.m.

<sup>207</sup> Act of 28 October 1969 respecting the protection of children and young workers, art. 16. In this respect, "night" means a period of at least 12 consecutive hours including the interval between 8 p.m. and 6 a.m. In the case of undertakings operating continuous processes, or young

*Mali*,<sup>208</sup> *Mauritania*,<sup>209</sup> *Mauritius*,<sup>210</sup> *Mexico*,<sup>211</sup> *Republic of Moldova*,<sup>212</sup>  
*Namibia*,<sup>213</sup> *Nicaragua*,<sup>214</sup> *Niger*,<sup>215</sup> *Norway*,<sup>216</sup> *Panama*,<sup>217</sup> *Paraguay*,<sup>218</sup>  
*Peru*,<sup>219</sup> *Poland*,<sup>220</sup> *Qatar*,<sup>221</sup> *Romania*,<sup>222</sup> *Russian Federation*,<sup>223</sup>

persons working as apprentices in hotels, bars and restaurants, work may be permitted until 10 p.m.

<sup>208</sup> Act No. 92-020 of 23 September 1992 establishing the Labour Code, art. L.186 and Decree No. 96-178/P-RM of 13 June 1996 to make regulations under the Labour Code, art. D.189-16. The law provides for a minimum period of night rest of 12 hours including the interval between 9 p.m. and 5 a.m.

<sup>209</sup> Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book II, ss. 7-9. Young workers must have a period of night rest of 11 consecutive hours including the interval between 10 p.m. and 5 a.m.

<sup>210</sup> Labour Act, 1975, s. 15(3a). The prohibition extends to the period between 6 p.m. and 6 a.m.

<sup>211</sup> Federal Labour Act, as amended up to 1 October 1995, art. 175(II) and Political Constitution of the United Mexican States, art. 123A(II). Young persons under 18 years of age may not be assigned to industrial work during the night, whereas young persons under 16 years of age may not be employed in any work after 10 p.m.

<sup>212</sup> Labour Code, Law of 25 May 1973, as amended up to 23 July 1998, art. 185.

<sup>213</sup> Labour Act of 13 March 1992, s. 34(1).

<sup>214</sup> Childhood and Adolescence Act, No. 287 of 27 May 1998, art. 74. Night means, in this respect, the ten-hour period from 8 p.m. to 6 a.m.

<sup>215</sup> Ordinance No. 96-039 of 29 June 1996 establishing the Labour Code, arts. 96, 97. The minimum nightly rest period is of 11 consecutive hours.

<sup>216</sup> Ordinance No. 554 of 30 April 1998 respecting work of children and of youth, ss. 10, 11 and Act No. 4 of 4 February 1977 respecting workers' protection and the working environment, as subsequently amended, last by Act No. 19 of 28 February 1997, s. 37. Young persons must have an off-duty period of at least 12 hours between two working periods, including in the case of youths between 15 and 18 years of age the period from 10 p.m. to 6 a.m., or from 11 p.m. to 7 a.m., and in the case of children under 15 years of age the period from 9 p.m. to 7 a.m. Among the several exceptions, children may perform cultural or artistic work between 8 p.m. and 11 p.m.

<sup>217</sup> Labour Code adopted by Decree No. 252 of 30 December 1971, as amended to 1995, art. 120(1). The prohibition covers the period between 6 p.m. and 8 a.m.

<sup>218</sup> Act No. 213 of 29 June 1993, as amended by Act No. 496 of 22 August 1995, promulgating the Labour Code, art. 122. This provision does not apply to domestic employees working in the employer's house.

<sup>219</sup> Code on Children and Adolescents, Law No. 27337 of 21 July 2000, art. 57. The prohibition covers the period between 7 p.m. and 7 a.m. Night work by young persons between 15 and 18 years of age may be exceptionally authorized by judicial decision provided that it does not exceed four hours per day.

<sup>220</sup> Act of 26 June 1974 promulgating the Labour Code, arts. 190(1), 203(1). Young workers must have a rest from work, including night rest, of at least 14 hours.

<sup>221</sup> Labour Law No. 3 of 1962, arts. 2(4), 43. The prohibition refers to any work performed between sunset and sunrise.

<sup>222</sup> Labour Code, Law No. 10 of 23 November 1972, art. 161(1).

<sup>223</sup> Labour Code of 9 December 1971, as amended up to 30 April 1999, arts. 48, 177.

Rwanda,<sup>224</sup> Saudi Arabia,<sup>225</sup> Senegal,<sup>226</sup> Seychelles,<sup>227</sup> Slovakia,<sup>228</sup> Spain,<sup>229</sup> Sri Lanka,<sup>230</sup> Suriname,<sup>231</sup> Swaziland,<sup>232</sup> Thailand,<sup>233</sup> Togo,<sup>234</sup> Turkey,<sup>235</sup> Ukraine,<sup>236</sup> United Kingdom (Falkland Islands,<sup>237</sup> Gibraltar,<sup>238</sup> Guernsey<sup>239</sup>),

<sup>224</sup> Labour Code, Act of 28 February 1967, art. 120. However, it is permitted to employ minors in non-industrial establishments of a family nature where only the parents and their children are occupied for work which is not considered to be noxious, harmful or dangerous.

<sup>225</sup> Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code, art. 161. Night is meant to comprise an interval of at least 11 hours between sunset and sunrise.

<sup>226</sup> Order No. 3724/IT of 22 June 1954 regarding child labour, art. 3.

<sup>227</sup> Conditions of Employment Regulations of 24 April 1991 (S.I. 34), s. 22(2). The prohibition covers the period between 10 p.m. and 5 a.m.

<sup>228</sup> Act No. 451/1992 providing for the Labour Code, s. 166(1). As an exception, young persons older than 16 years of age may perform night work not exceeding one hour if such is necessary for their vocational training.

<sup>229</sup> Royal Legislative Decree No. 1/95 of 24 March 1995 regarding the Workers Statute Law, art. 6(2).

<sup>230</sup> Employment of Women, Young Persons and Children (Amendment) Act, No. 32 of 1984, ss. 2(1), 3(3), 4, 34. In this regard, night means at least 12 consecutive hours which may not end later than 6 a.m. and which: (i) in the case of persons under the age of 16 years, must include the period of eight consecutive hours between 10 p.m. and 6 a.m., (ii) in the case of persons over 16 years, must include at least a seven-hour interval between 10 p.m. and 6 a.m., and (iii) in the case of persons over 16 years and who are undergoing vocational training in the baking industry, must include the seven consecutive hours falling between 9 p.m. and 4 a.m. The Minister may, after consultation with the employers' and workers' organizations concerned, if any, authorize, by Order published in the *Gazette*, the employment during the night of male young persons who have attained the age of 16 years but are under the age of 18 years for purposes of apprenticeship or vocational training in such industrial undertakings required to be carried on continuously as is or are specified in the Order.

<sup>231</sup> Labour Act, 1963, as amended by Decree No. E-41 of 12 September 1983, art. 20. The prohibition applies to young persons between 14 and 18 years of age. No definition of "night" is given regarding this prohibition.

<sup>232</sup> Employment Act No. 5 of 26 September 1980, ss. 97(2b), 98(1). The prohibition refers to employment between the hours 6 p.m. and 7 a.m.

<sup>233</sup> Labour Protection Act (B.E.2541) of 12 February 1998, art. 47. The only exception refers to young workers under 18 years of age who are performers in movies, plays or other similar forms of exhibition work.

<sup>234</sup> Ordinance No. 16 of 8 May 1974 establishing the Labour Code, art. 110, and Decree No. 884-55/ITLS of 28 October 1955 respecting the employment of women and children, arts. 7, 8. The law provides for a minimum nightly rest period of 11 consecutive hours including the period from 8 p.m. to 6 a.m.

<sup>235</sup> Labour Act No. 1475 of 25 August 1971, art. 69.

<sup>236</sup> Labour Code of 11 April 1994, art. 55.

<sup>237</sup> Employment of Women, Young Persons and Children Ordinance, 1967, s. 2.

<sup>238</sup> Employment Ordinance. See also Employment of Women, Young Persons and Children (Amendment) Ordinance, 1978.

<sup>239</sup> Act relative to the Employment of Women, Young Persons and Children, 1926, art. 1(3).

Venezuela,<sup>240</sup> and Zambia,<sup>241</sup> where persons of either sex under the age of 18 may not be employed during the night in all establishments.

**107.** According to available information, the minimum period of compulsory night rest for young workers varies from seven to 13 hours. This night period is defined either by reference to fixed hours or as an overall amount of hours which needs to cover a specific interval. In *Morocco*,<sup>242</sup> children under the age of 16 years may not be employed between 10 p.m. and 5 a.m., while in *Cuba*,<sup>243</sup> the prohibition of night work applies to young persons between 15 and 16 years of age and covers an eight-hour period between 10 p.m. and 6 a.m. In *Algeria*,<sup>244</sup> young persons under 19 years of age may not be employed between 9 p.m. and 5 a.m. In *Iraq*,<sup>245</sup> young persons between 15 and 17 years of age are not allowed to work between 9 p.m. and 6 a.m. In *Yemen*,<sup>246</sup> it is forbidden to make young persons under 15 years of age work during the night, that is between 8 p.m. and 5 a.m., except in those jobs as may be specified by order of the Minister of Labour. Likewise, in *Viet Nam*<sup>247</sup> young workers under 18 years of age may only be employed at night in certain categories of occupations determined by the Ministry of Labour, Invalids and Social Affairs. In *Switzerland*,<sup>248</sup> young workers under 19 years of age are prohibited to work at night. However, derogations to this prohibition may be granted in favour of young persons above 16 years of age, especially for reasons of vocational training. In *Jordan*,<sup>249</sup> the employment of minors between 8 p.m. and 6 a.m. or in works involving danger, hardship and health hazards is prohibited, while in

<sup>240</sup> Labour Act of 27 November 1990, as modified by Act of 19 June 1997, art. 257. Nonetheless, young persons between 16 and 18 years of age may work at night in family undertakings, in cases of *force majeure*, or when the national interest so demands and the authorization of the Labour Inspector is first obtained; see Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 190.

<sup>241</sup> Employment of Women, Young Persons and Children Act (Cap. 505) of 13 April 1933, as amended to 1991, ss. 8, 9, 10. The term "night" is defined as a period of at least 11 consecutive hours, including the interval between 10 p.m. and 5 a.m. The prohibition does not apply to: (i) young persons employed in family undertakings; (ii) persons between the ages of 16 and 18 years employed in industrial undertakings or works which by reason of the nature of the process are required to be carried on continuously day and night; (iii) persons between the ages of 16 and 18 years in cases of emergency which could not have been controlled or foreseen.

<sup>242</sup> Decree of 2 July 1947 to regulate employment, arts. 12, 13.

<sup>243</sup> Decree No. 101 of 3 March 1982 establishing regulations on protection and hygiene at work, arts. 128, 129.

<sup>244</sup> Act No. 90-11 of 21 April 1990 respecting labour relations, art. 28.

<sup>245</sup> Act No. 71 of 27 July 1987 promulgating the Labour Code, ss. 59(b), 91(1), (2).

<sup>246</sup> Labour Code, Act No. 5 of 1995, arts. 2, 48(3), 73(1).

<sup>247</sup> Labour Code of 23 June 1994, art. 122(2).

<sup>248</sup> Federal Labour Act of 13 March 1964, as amended through Federal Act of 20 March 1998, arts. 29(1), 31(4), and Order No. 1 of 10 May 2000 relative to Federal Labour Act, art. 58.

<sup>249</sup> Labour Code, Law No. 8 of 1996, arts. 73-75.

the *Syrian Arab Republic*,<sup>250</sup> young persons under 15 years of age may not be employed between 7 p.m. and 6 a.m., with the exception of persons engaged in agriculture or domestic workshops where only members of the family are employed. In *Angola*,<sup>251</sup> minors who have not reached 16 years of age may not engage in night work between 8 p.m. and 7 a.m., while in *Egypt*,<sup>252</sup> juveniles, defined as male or female youths of an age of 12 complete years up to 17 complete years, are not allowed to work between 7 p.m. and 6 a.m. Similarly, in *Bahrain*,<sup>253</sup> adolescents between 14 and 16 years of age may not be employed during a period of not less than 11 hours between sunset and sunrise. In *India*,<sup>254</sup> no child (person who has not completed his 14th year of age) may be permitted or required to work between 7 p.m. and 8 a.m. In *Pakistan*,<sup>255</sup> no child (person who has not completed his 15th year of age) or adolescent (person who has not completed his 17th year) may be permitted or required to work in a factory between 7 p.m. and 6 a.m. provided that the Government may, by notification to the *Official Gazette* in respect of any class of factories, vary these limits to any span of 13 hours between 5 a.m. and 7.30 p.m. In *Papua New Guinea*,<sup>256</sup> young persons under 16 years of age may not be employed between 6 p.m. and 6 a.m. In the *United Arab Emirates*,<sup>257</sup> no young persons may be employed in industrial undertakings, the term night meaning in this respect a period of not less than 12 consecutive hours, including the period from 8 p.m. to 6 a.m. Similarly, in the *Dominican Republic*,<sup>258</sup> young persons under 16 years of age are prohibited from engaging in night work during a period of 12 consecutive hours which cannot start after 8 p.m. or terminate before 6 a.m. In the *Netherlands*,<sup>259</sup> the employer is under the obligation to organize work in such a way that young workers have an uninterrupted rest period of at least 12 hours in any period of 24 consecutive hours, which must include the period between 10 p.m. and 6 a.m. or

<sup>250</sup> Law No. 91 of 5 April 1959 establishing the Labour Code, arts. 125, 129.

<sup>251</sup> General Labour Act No. 2/2000 of 11 February 2000, art. 287(4).

<sup>252</sup> Labour Code promulgated by Act No. 137 of 1981, arts. 143, 146.

<sup>253</sup> Legislative Decree No. 23 of 16 June 1976 promulgating the Labour Law for the Private Sector, as amended by the Legislative Decree No. 14 of 1993, arts. 49, 52.

<sup>254</sup> Child Labour (Prohibition and Regulation) Act, No. 61 of 23 December 1986, s. 7(4). See also Factories Act No. 63 of 23 September 1948, as amended, ss. 70(1), 71(1b). Adolescents who have not attained the age of 17 years may not be allowed or required to work between 7 p.m. and 6 a.m.

<sup>255</sup> Factories Act, 1934, as amended to 1987, ss. 2, 54(3) and Employment of Children Act, 1991, ss. 2, 7(4).

<sup>256</sup> Employment Act No. 54 of 21 August 1978, s. 105(1). The only exception is provided for young persons between 16 and 17 years of age who are employed in family undertakings.

<sup>257</sup> Federal Law No. 8 of 1980 regarding regulation of labour relations, art. 23.

<sup>258</sup> Act No. 16-92 of 29 May 1992 promulgating the Labour Code, art. 246.

<sup>259</sup> Working Time Act of 23 November 1995, art. 5:5(1).

between 11 p.m. and 7 a.m. In the *United States*,<sup>260</sup> child workers between 14 and 16 years of age may not be employed between 7 p.m. and 7 a.m., except during the summer when they may be employed until 9 p.m. This rule, however, does not apply to young persons working in agriculture. In *Eritrea*,<sup>261</sup> it is forbidden to let minors work after 10 p.m.

**108.** In several countries, national legislation draws a distinction between children and young persons applying different restrictions to each of the two age groups. In *Denmark*,<sup>262</sup> there is a prohibition on the night employment of young persons aged between 13 and 15 years, or persons covered by the compulsory schooling requirement. In this respect, night is defined as the period between 8 p.m. and 6 a.m. As regards young persons who have reached the age of 15 years and who are no longer engaged in compulsory schooling, are not allowed to work between 10 p.m. and 6 a.m., unless otherwise explicitly regulated. In *Malaysia*,<sup>263</sup> children under the age of 14 may not be required or permitted to work between 8 p.m. and 7 a.m. except for those engaged in employment in any public entertainment, while young persons under 16 years of age may not be employed between 8 p.m. and 6 a.m. except for those engaged in employment in an agricultural undertaking or any employment in a public entertainment. The Government of *Portugal*<sup>264</sup> has reported that night work is prohibited for minors under 16 years of age in any sector of economic activity, and in this respect night work includes the period between 8 p.m. and 7 a.m. As regards young persons of 16 and 17 years of age, they cannot in principle perform night work in all sectors between 10 p.m. and 6 a.m. or between 11 p.m. and 7 a.m. In *Slovenia*,<sup>265</sup> young persons under 16 years of age are not permitted to work between 10 p.m. and 6 a.m., whereas workers between 16 and 18 years of age are not permitted to work between 11 p.m. and 6 a.m. In *Cyprus*,<sup>266</sup> the law

<sup>260</sup> Code of Federal Regulations, para. 570.35(a)(6).

<sup>261</sup> Labour Law No. 8/1991.

<sup>262</sup> Order No. 516 of 14 June 1996 respecting work by young persons, ss. 22, 39. Various exceptions are provided for different types of work e.g. bakeries, warehouses, sale rooms, petrol stations, theatres and cinemas, restaurants and hotels, farming and stock-raising.

<sup>263</sup> Children and Young Persons (Employment) Act, 1966, ss. 1A(1), 5(1a), 6(1a).

<sup>264</sup> Legislative Decree No. 409/71 of 27 September 1971, as amended by Act No. 58/99 of 30 June 1999, art. 33. Subject to authorization, young persons under 17 years of age may perform night work in specific sectors of activity, except during the period between midnight and 5 a.m. Night work during the latter period is only permitted as long as it is justified for objective reasons in activities of a cultural, artistic, sporting, or advertising nature. The above prohibitions do not apply if the night work is indispensable due to unusual or unforeseen events or to exceptional and unavoidable circumstances, as long as there are no other available workers; in such cases, the night work cannot exceed five consecutive days and the young persons are entitled to a compensatory rest period of the same number of hours.

<sup>265</sup> Labour Relations Act of 29 March 1990, as amended by Act of 30 January 1991, art. 73.

<sup>266</sup> Employment of Children and Young Persons (Amendment) Law, No. 87(I) of 1999, s. 6. Young persons may, however, be exempted from the prohibition when employed for artistic,

prohibits the employment of children under the age of 16 in any occupation from 7 p.m. to 6 a.m. as well as the employment of young persons between 16 and 18 years of age in any occupation from 10 p.m. to 6 a.m. or between 11 p.m. and 7 a.m. In *Finland*, there is a prohibition for young persons under 15 years of age between 8 p.m. and 8 a.m., whereas in the case of young workers between 15 and 18 years of age working hours must not fall between 10 p.m. and 6 a.m. However, it is possible for workers aged 15 to work until midnight in two-shift work at jobs approved and supervised by a public authority and held for the purpose of vocational training. In *Israel*,<sup>267</sup> young persons under the age of 18 to whom the Compulsory Education Law 5709-1949 applies may not work between 8 p.m. and 8 a.m., while those youths to whom the Compulsory Education Law does not apply are not permitted to work between 10 p.m. and 6 a.m.

**109.** In *Malawi*,<sup>268</sup> children under the age of 12 years may not be employed at night; young persons under the age of 14 years may not be employed at night in any public or private industrial undertaking other than an undertaking in which only members of the same family are employed except in so far as employment involves light work; and young persons under the age of 16 may not be employed at night in any public or private industrial undertaking other than an undertaking in which only members of the same family are employed provided that males may be so employed under licence issued by the Governor. In *Barbados*,<sup>269</sup> children under the age of 15 years are prohibited from working during the night in any undertaking whatsoever, whereas young persons who have reached 15 years but have not reached 18 years of age may not be employed in any industrial undertaking during the night or in any work that is likely to cause injury to their health, safety or morals.

**110.** In some cases, different time and age restrictions apply to specific branches of activity or occupation. The Government of *Tunisia*<sup>270</sup> has reported

scientific or training purposes during a public entertainment performance in accordance with the relevant authorization issued by the Minister of Labour.

<sup>267</sup> Youth Labour Law 5713-1953, s. 24. The Minister of Labour and Social Welfare may authorize exceptions especially for reasons of vocational training, in the case of seasonal agricultural work or shift work in an industrial enterprise, or when a state of emergency exists.

<sup>268</sup> Employment of Women, Young Persons and Children Act, No. 22 of 1939, ss. 2, 3(1a), 4(a), 5.

<sup>269</sup> Employment (Miscellaneous Provisions) Act of 24 March 1977, arts. 8, 13. Young persons may be authorized, however, by decision of the Minister, to work during the night for the purposes of apprenticeship or vocational training in a specified industry, in which case they will be granted a period of rest of at least 13 consecutive hours between two periods of work.

<sup>270</sup> Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, arts. 65-67, 74. However, young persons who have reached 16 years but have not reached 18 years of age may be employed at night: (i) in case of *force majeure*; (ii) when employed as apprentices in bakeries and their training so requires; (iii) upon authorization of the chief labour inspector for training purposes in specific industries; (iv) for the

that, in respect of non-agricultural activities, children below 14 years of age are not allowed to work at night during a period of 14 consecutive hours comprising the interval between 8 p.m. and 8 a.m., while young persons who are more than 14 but less than 18 years of age may not be employed during a period of 12 consecutive hours comprising the interval between 10 p.m. and 6 a.m. As regards agricultural activities, young workers under 18 years of age may not be employed between 10 p.m. and 5 a.m., and must enjoy not less than 12 consecutive hours of night rest if they are under 16 years of age and ten consecutive hours if they are between 16 and 18 years of age. In *Bangladesh*,<sup>271</sup> persons who have not reached 16 years of age and adolescents between 16 and 18 years of age are not allowed to work in factories between 7 p.m. and 7 a.m. Regarding commercial establishments, young persons between 16 and 18 years of age may not be employed from 8 p.m. to 7 a.m., while in tea plantations, children (persons who have not reached 15 years of age) may not be employed between 7 p.m. and 6 a.m. The Government of *Australia*<sup>272</sup> has reported that some awards at the federal level prohibit the employment of junior employees under 21 years of age during a period of night. The Federal Meat Industry Award of 1981, for instance, provides that no junior male under the age of 18 years may be employed on night shifts, and no junior female may be employed on shift work. Similar restrictions are also to be found in awards of state or territory jurisdictions. In Queensland, for instance, under the Fast Food Industry Award, no employee under the age of 18 years may work, or be permitted to work, later than 8 p.m. without parental consent, while in Victoria, under the Textile Industry Award 2000 and Clothing Trades Award, no apprentice under the age of 18 years may be employed on any shift other than the day shift.

**111.** In conclusion, it would seem that practically all States whose reports are examined here have enacted legislation prohibiting or restricting the employment of minors during the night. On the whole, the scope of these laws and regulations appears to reflect the standards laid down in the Night Work of Young Persons (Industry) Convention, 1919 (No. 6), and the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90). Recommendation on the Worst Forms of Child Labour, 1999 (No. 190), also recommends that work during the night by young persons under 18 years of age be considered as hazardous, and therefore one of the worst forms of child labour to be eradicated in terms of Convention No. 182. The analysis of the information communicated by the governments leads to the conclusion that member States

needs of artistic performances subject to specific authorization of the chief labour inspector and on condition that no work after midnight is involved.

<sup>271</sup> Factories Act, 1965, art. 70(1b); Shops and Establishments Act, 1965, art. 23; Tea Plantations Labour Ordinance, 1962, art. 22. See also Employment of Children Act, 1938, art. 3(2).

<sup>272</sup> Textile Industry Award 2000, s. 19.11, and Clothing Trades Award 1999, s. 20.10.

are much less inclined to abolish, modify, or otherwise relax the prohibition on night work of young persons than the prohibition, if any, applicable to adult women workers.

## V. The definition of night

**112.** The duration of minimum compulsory night rest for women was set out in common Article 2(1) of Conventions Nos. 4 and 41 to be a period of at least 11 consecutive hours including the interval between 10 p.m. and 5 a.m. It was slightly redrafted in Article 2 of Convention No. 89 to signify a period of at least 11 consecutive hours, including an interval prescribed by the competent authority of at least seven consecutive hours falling between 10 p.m. and 7 a.m. To enhance the adaptability of the latter Convention to differing national conditions, Article 2 further provided that the competent authority could prescribe different intervals for different areas, industries, undertakings or branches of industries, but should consult the employers' and workers' organizations concerned before prescribing an interval beginning after 11 p.m. In practice, there is an extreme diversity in the legal prescriptions setting the limits of the prohibition on night work. The duration of the ban period varies from six to 12-and-a-half hours, but most States tend to opt for a night rest period for women between seven and nine hours on the average. In general, longer periods which in some cases stretch to up to 14 consecutive hours, are provided for working children and young persons. Some countries prefer a general definition of the term "night work" instead of a specific designation of women's obligatory night rest period.

**113.** In a number of countries, mostly those having ratified one of the Conventions under review, the duration of the night period with reference to employment of women reflects the standard prescribed in the Conventions, i.e. at least 11 hours of night rest including either the interval between 10 p.m. and 5 a.m. in accordance with the provisions of Conventions Nos. 4 and 41, or a seven-hour interval between 10 p.m. and 7 a.m. according to the terms of Convention No. 89. For instance, in *Belize*,<sup>273</sup> *Burkina Faso*,<sup>274</sup> *Central African*

<sup>273</sup> Labour Act, Ch. 234, s. 160(1a).

<sup>274</sup> Act No. 11-92/ADP of 22 December 1992 establishing the Labour Code, arts. 80, 83. See also Decree No. 436/ITLS/HV of 15 July 1953 concerning night work hours, art. 1, and Decree No. 539/ITLS/HV of 29 July 1954 concerning the employment of children, arts. 3, 4.

*Republic*,<sup>275</sup> *Cyprus*,<sup>276</sup> *India*,<sup>277</sup> *Madagascar*,<sup>278</sup> *Mauritania*,<sup>279</sup> and *Niger*,<sup>280</sup> night with reference to the employment of women means at least 11 consecutive hours including the interval between 10 p.m. and 5 a.m. In *Slovakia*,<sup>281</sup> the uninterrupted rest period for women may not be shorter than 11 hours including the interval between 10 p.m. and 6 a.m. In *Austria*,<sup>282</sup> night within the meaning of the Federal Act proscribing the night work of women in industry is defined as a period of at least 11 consecutive hours, including the period between 8 p.m. and 6 a.m. In *Ghana*,<sup>283</sup> night work in relation to female workers means work at any time within a period of 11 consecutive hours including the seven consecutive hours occurring between 10 p.m. and 7 a.m. In the *United Arab Emirates*,<sup>284</sup> night work is prohibited during a period of not less than 11 consecutive hours, including a longer nine-hour interval from 10 p.m. to 7 a.m. In *Togo*,<sup>285</sup> the law provides for women workers a minimum nightly rest of 11

<sup>275</sup> Act No. 61-221 of 2 June 1961 establishing the Labour Code, arts. 120, 121. See also Decree No. 839 ITT of 22 November 1953 concerning night work hours, art. 1, and Decree No. 3759 of 25 November 1954 respecting the employment of women and pregnant women, arts. 3, 4.

<sup>276</sup> Employment of Women (During the Night) Law of 26 February 1932, s. 2. With respect to employment of children and young persons, night is defined as a period of at least 12 consecutive hours including the interval 10 p.m. to 5 a.m.

<sup>277</sup> Factories Act No. 63 of 23 September 1948, as amended, s. 66(1b). In principle, no woman may be employed in a factory between 7 p.m. and 6 a.m. Provincial governments may vary those limits without, however, authorizing the employment of any woman between 10 p.m. and 5 a.m.

<sup>278</sup> Act No. 94-029 of 25 August 1995 establishing the Labour Code, arts. 90, 92, and Decree No. 72-226 of 6 July 1972 regulating overtime and night work, art. 1.

<sup>279</sup> Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book II, ss. 7, 8, and Order No. 5254 IGTLS/AOF of 19 July 1954 respecting the employment of women and pregnant women, art. 5.

<sup>280</sup> Decree No. 67-126/MFP/T of 7 September 1967 on labour regulations, art. 107.

<sup>281</sup> Act No. 451/1992 providing for the Labour Code, ss. 90(2), 99, 151.

<sup>282</sup> Federal Act of 25 June 1969 regarding women's night work, s. 3(2). For agricultural enterprises, the compulsory night rest period comprises the hours from 7 p.m. to 5 a.m.; see Agricultural Work Act, s. 62(2). For undertakings affected by seasonal factors or where extraordinary circumstances make it necessary, the labour inspectorate may, at a plant operator's request and following consultations with representatives of employers and workers, allow a variation in the duration of night to be defined as a period of ten consecutive hours including the interval between 10 p.m. and 6 a.m. This may be authorized for a period of two weeks for no more than 40 days in any calendar year; *ibid.*, s. 3(3).

<sup>283</sup> Labour Decree, 1967, s. 47.

<sup>284</sup> Federal Law No. 8 of 1980 regarding regulation of labour relations, art. 27.

<sup>285</sup> Ordinance No. 16 of 8 May 1974 establishing the Labour Code, art. 110, and Decree No. 884-55/ITLS of 28 October 1955 respecting the employment of women and children, arts. 7, 8.

consecutive hours including the period from 8 p.m. to 6 a.m., while in *Congo*,<sup>286</sup> the 11 hours' rest must comprise the interval from 8 p.m. to 5 a.m. In *Iraq*,<sup>287</sup> women workers are entitled to a period of at least 11 consecutive hours of rest each day, and that period must include seven hours falling between 9 p.m. and 6 a.m.

**114.** According to the legislation of certain countries, the 11-hour prohibition applies without reference being made to a specific interval of seven or more hours. In the case of *Djibouti*<sup>288</sup> and *Saudi Arabia*,<sup>289</sup> for instance, labour laws provide for a minimum period of night rest for women of 11 hours between sunset and sunrise. In certain countries, the limits of the 11-hour period are fixed and may not vary. In *Costa Rica*,<sup>290</sup> *Kuwait*,<sup>291</sup> *Pakistan*<sup>292</sup> and *Venezuela*,<sup>293</sup> for instance, the prohibition on night work of women refers to the period between 7 p.m. and 6 a.m., while in *Bahrain*,<sup>294</sup> *Bangladesh*,<sup>295</sup> *Egypt*,<sup>296</sup> *Guinea-Bissau*,<sup>297</sup> *Libyan Arab Jamahiriya*<sup>298</sup> and the *Syrian Arab Republic*<sup>299</sup> it covers the period between 8 p.m. and 7 a.m.

<sup>286</sup> Act No. 45-75 of 15 March 1975 establishing the Labour Code, arts. 106, 109.

<sup>287</sup> Act No. 71 of 27 July 1987 promulgating the Labour Code, s. 83(2).

<sup>288</sup> Labour Code for Overseas Territories, Law No. 52-1322 of 15 December 1952, arts. 113, 114.

<sup>289</sup> Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code, art. 161.

<sup>290</sup> Labour Code of 1943, as amended up to 1996, arts. 135, 88. See also Childhood and Adolescence Law No. 7739 of 6 January 1998, art. 95.

<sup>291</sup> Ministerial Order No. 28 of 1976.

<sup>292</sup> Factories Act, 1934, as amended to 1987, s. 45(b), and Mines Act, 1923, s. 23-C(2).

<sup>293</sup> Decree No. 1.563 of 31 December 1973 on labour act regulations, arts. 209, 211, 212(a). By means of exception, women are allowed to work until 10 p.m. in spinning mills and textile factories provided that they are accorded an uninterrupted rest of at least 11 hours. In addition, women above 18 years of age employed in the daily press, hotels, restaurants, coffee shops, theatres and domestic services may work until midnight on condition that they have an uninterrupted rest of at least nine hours.

<sup>294</sup> Legislative Decree No. 23 of 16 June 1976 promulgating the labour law for the private sector, as amended by Legislative Decree No. 14 of 1993, art. 59.

<sup>295</sup> Factories Act, 1965, art. 65(1b); Shops and Establishments Act, 1965, art. 23; Tea Plantations Labour Ordinance, 1962, art. 22. The corresponding period for tea plantation works is from 7 p.m. to 6 a.m. With respect to factories, however, the Government may vary the limits to any span of ten-and-a-half hours between 8.30 p.m. and 5 a.m.

<sup>296</sup> Labour Code promulgated by Act No. 137 of 1981, art. 152.

<sup>297</sup> General Labour Act No. 2/86 of 5 April 1986, art. 60. However, night work in agriculture is defined as the period between 8 p.m. and 6 a.m.

<sup>298</sup> Labour Code, Act No. 58-2970 of 1 May 1970, art. 96.

<sup>299</sup> Law No. 91 of 5 April 1959 establishing the Labour Code, art. 131, and Order No. 666 of 20 July 1976.

**115.** Among the States parties to one or more of the Conventions under review, some apply shorter night periods than that prescribed in Article 2 of those instruments. For example, the night work ban for women extends to only seven hours between 11 p.m. and 6 a.m. in *Slovenia*,<sup>300</sup> and between 10 p.m. and 5 a.m. in *Senegal*.<sup>301</sup> In *Angola*,<sup>302</sup> *Philippines*<sup>303</sup> and *Swaziland*,<sup>304</sup> women are not allowed to work in any industrial undertaking between 10 p.m. and 6 a.m. A nightly rest of eight hours is also provided for in *Algeria*,<sup>305</sup> where women may not work between 9 p.m. and 5 a.m. Finally, *Bolivia*,<sup>306</sup> *Nicaragua*<sup>307</sup> and *Paraguay*,<sup>308</sup> have legislated a ten-hour rest period between 8 p.m. and 6 a.m., while *Rwanda*<sup>309</sup> applies a prohibition of the same length between 7 p.m. and 5 a.m.

**116.** In contrast, a limited number of countries have prescribed longer night periods exceeding the minimum of 11 hours required by the Conventions. This is the case of *Cameroon*<sup>310</sup> and *Tunisia*,<sup>311</sup> for instance, where night is

<sup>300</sup> Labour Relations Act of 29 March 1990, as amended by Act of 30 January 1991, art. 39. As the Committee of Experts has pointed out in the past, the legislation fails to give effect to the provisions of Convention No. 89 since the period of night rest is limited to seven consecutive hours.

<sup>301</sup> Labour Code, Law No. 97-17 of 1 December 1997, art. L.140, and Decree No. 70-182 of 20 February 1970 concerning night work hours, art. 1.

<sup>302</sup> General Labour Act No. 2/2000 of 11 February 2000, art. 320. It is recalled that, under the terms of previous legislation, the prohibition of women's night work covered a period of ten hours between 8 p.m. and 6 a.m. which has given rise to recurrent comments by the Committee over the last 15 years. It is noted that the most recently adopted new General Labour Act fails to bring national legislation into conformity with Convention No. 89 as the night period has further been reduced to eight hours.

<sup>303</sup> Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 130. Furthermore, in any commercial or non-industrial undertaking or branch thereof, other than agricultural, women are not allowed to work between midnight and 6 a.m., while in any agricultural undertaking they may not be employed at night time unless they are given a period of rest of not less than nine consecutive hours. In a series of comments over the last 20 years, the Committee of Experts has been noting that the legislation is not in accordance with Convention No. 89 in that the prohibition of night employment of women covers a period of only eight hours and not 11 consecutive hours as laid down in Article 2 of the Convention.

<sup>304</sup> Employment Act No. 5 of 26 September 1980, s. 101(1).

<sup>305</sup> Act No. 90-11 of 21 April 1990 respecting labour relations, arts. 27, 29.

<sup>306</sup> Supreme Decree of 26 May 1939 to issue the Labour Code, art. 46.

<sup>307</sup> Labour Code, Act No. 185 of 30 October 1996, art. 50.

<sup>308</sup> Labour Code, Act No. 213 of 29 June 1993, as amended by Act No. 496 of 22 August 1995, art. 195.

<sup>309</sup> Decree of 14 March 1957 respecting working hours, weekly rest and public holidays, art. 15.

<sup>310</sup> Labour Code, Law No. 92/007 of 14 August 1992, ss. 81, 82(2).

<sup>311</sup> Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 66.

defined as a period of 12 consecutive hours comprising the interval between 10 p.m. and 6 a.m. In *Chad*,<sup>312</sup> the minimum nightly rest for women and young workers under 18 years of age is 12 hours including the period between 10 p.m. and 5 a.m., while in *Guinea*,<sup>313</sup> the period of 12 consecutive hours of rest must comprise the interval between 8 p.m. and 6 a.m. Similarly, in *Haiti*<sup>314</sup> and *Oman*<sup>315</sup> night covers the period between 6 p.m. and 6 a.m., while in *Kenya*,<sup>316</sup> the prohibition of night work applies from 6.30 p.m. to 6.30 a.m. In *Gabon*<sup>317</sup> and *Mali*,<sup>318</sup> the law provides for a compulsory rest of at least 12 hours including the night work hours defined as the period from 9 p.m. to 6 a.m. and from 9 p.m. to 5 a.m. respectively. Finally, in the *Democratic Republic of the Congo*,<sup>319</sup> women workers are entitled to not less than 12 consecutive hours' rest, including a period of not less than seven consecutive hours falling between 7 p.m. and 7 a.m.

**117.** In some countries, the term "night" is defined differently depending on the season or geographical area. In *Lebanon*,<sup>320</sup> night is deemed to cover a nine-hour period between 8 p.m. and 5 a.m. from 1 May to 30 September and an 11-hour period between 7 p.m. and 6 a.m. from 1 October to 30 April. In *Benin*,<sup>321</sup> any work performed between 9 p.m. and 5 a.m. is considered to be night work but variations are possible according to seasons. In *Brazil*,<sup>322</sup> night work is defined as work performed between 10 p.m. and 5 a.m. for urban areas, and between 9 p.m. and 5 a.m. for rural areas. Finally, in *Viet Nam*,<sup>323</sup> night

<sup>312</sup> Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code, arts. 204, 208.

<sup>313</sup> Ordinance No. 003/PRG/SGG/88 of 28 January 1988 issuing the Labour Code, ss. 146, 149, and Decree No. 1392/MASE/DNTLS/90 of 15 May 1990 respecting the employment of women and pregnant women, art. 1.

<sup>314</sup> Labour Code, Decree of 24 February 1984, art. 120.

<sup>315</sup> Labour Law enacted by Sultani Decree No. 34/73, s. 80.

<sup>316</sup> Employment Act No. 2 of 15 April 1976, s. 28(1).

<sup>317</sup> Act No. 3/94 of 21 November 1994 establishing the Labour Code, arts. 166, 169.

<sup>318</sup> Act No. 92-020 of 23 September 1992 establishing the Labour Code, arts. L.141, L.186.

<sup>319</sup> Legislative Ordinance No. 67/310 of 9 August 1967 to establish a Labour Code, ss. 107, 108, and Order No. 68/13 of 17 May 1968 to lay down conditions of work for women and children, s. 16.

<sup>320</sup> Labour Code, Law of 23 September 1946, as amended by Law No. 536 of 24 July 1996, art. 26. Following the Committee of Experts' repeated comments to the effect that the nine-hour night rest period prescribed by art. 26 of the Labour Code was inconsistent with the Convention, which provides for a period of at least 11 consecutive hours, the Government has reported that a new draft Labour Code currently under preparation is expected to bring the definition of the term "night" into line with Article 2 of the Convention.

<sup>321</sup> Law No. 98-004 of 27 January 1998 to establish a Labour Code, art. 154.

<sup>322</sup> Decree No. 5.452 of 1 May 1943 concerning consolidation of labour acts, art. 73(1), (2). National legislation further specifies that during this period one hour corresponds to 52 minutes and 30 seconds.

<sup>323</sup> Labour Code of 23 June 1994, art. 70.

means the period from 10 p.m. to 6 a.m. for the northern provinces and the period from 9 p.m. to 5 a.m. for the southern ones.

**118.** Among the countries which prohibit, in principle, the employment of women during the night, or night work in general, without however being parties to one of the Conventions under review, *Papua New Guinea*<sup>324</sup> applies a 12-hour night period between 6 p.m. and 6 a.m., while in *Dominica*<sup>325</sup> and the *United Kingdom (Falkland Islands,*<sup>326</sup> *Gibraltar,*<sup>327</sup> *Guernsey*<sup>328</sup>) night with reference to the employment of women means at least 11 consecutive hours including the interval between 10 p.m. and 5 a.m. In *Jordan*<sup>329</sup> and *Turkey*<sup>330</sup> the prohibition extends to a ten-hour period between 8 p.m. and 6 a.m. In *Barbados*,<sup>331</sup> the term “night” means the period between 9 p.m. and 7 a.m. In *Norway*,<sup>332</sup> the term “night” signifies the hours between 9 p.m. and 6 a.m. In the *Republic of Korea*,<sup>333</sup> *Latvia*<sup>334</sup> and the *Republic of Moldova*,<sup>335</sup> women’s night work is prohibited from 10 p.m. to 6 a.m. In *Indonesia*<sup>336</sup> and *Malaysia*,<sup>337</sup> women’s work in any industrial or agricultural undertaking is prohibited between 10 p.m. and 5 a.m. Finally, in *Switzerland*,<sup>338</sup> night work is defined as work performed between 11 p.m. and 6 a.m.

**119.** In those countries not prohibiting the night employment of women in general, “night work” or “night shift” is generally defined either as a fixed time period, or as a minimum amount of hours comprising a fixed interval. The

<sup>324</sup> Employment Act, No. 54 of 21 August 1978, s. 99(1).

<sup>325</sup> Employment of Women, Young Persons and Children Act 1991, art. 2.

<sup>326</sup> Employment of Women, Young Persons and Children Ordinance, 1967, s. 2.

<sup>327</sup> Employment Ordinance.

<sup>328</sup> Act relative to the Employment of Women, Young Persons and Children, 1926, art. 1(3).

<sup>329</sup> Ministerial Order No. 4201 of 30 April 1997, art. 4. In two-shift working schedules, however, work may start at 5 a.m. and end at 11 p.m.

<sup>330</sup> Labour Act No. 1475 of 25 August 1971, art. 65(1). The Ministry of Labour may, when deemed necessary, issue regulations modifying the beginning and ending hours of night in connection with the nature of the work performed or the differences of climate and customs in various regions.

<sup>331</sup> Employment (Miscellaneous Provisions) Act of 24 March 1977, art. 3.

<sup>332</sup> Act No. 4 of 4 February 1977 respecting workers’ protection and the working environment, as subsequently amended, last by Act No. 19 of 28 February 1997, s. 42.

<sup>333</sup> Labour Standards Act No. 5309 of 13 March 1997, art. 68.

<sup>334</sup> Labour Code, as amended to 25 October 1994, art. 50.

<sup>335</sup> Labour Code, Law of 25 May 1973, as amended up to 23 July 1998, art. 52.

<sup>336</sup> Ordinance of 17 December 1925 on measures limiting child labour and night work for women, art. 3.

<sup>337</sup> Employment Act No. 265 of 1955, as amended to 1981, s. 34(1).

<sup>338</sup> Federal Labour Act of 13 March 1964, as amended through Federal Act of 20 March 1998, arts. 10(1), 17a(1), and Order No. 1 of 10 May 2000 relative to Federal Labour Act, art. 29.

periods so defined vary from six to 12 hours. In the *Netherlands*,<sup>339</sup> for instance, “night shift” means a shift worked entirely or partly between midnight and 6 a.m., while in *Finland*<sup>340</sup> and *Singapore*,<sup>341</sup> night work is considered to be work carried out between 11 p.m. and 6 a.m. In *Italy*,<sup>342</sup> night work is defined as activity carried out during a period of at least seven consecutive hours comprising the interval between midnight and 5 a.m. A seven-hour period between 10 p.m. and 5 a.m. is also prescribed in the legislation of *Antigua and Barbuda*,<sup>343</sup> *Burundi*,<sup>344</sup> *France*,<sup>345</sup> *Japan*,<sup>346</sup> *Mauritius*,<sup>347</sup> *Morocco* and *Seychelles*.<sup>348</sup> In the case of *Albania*,<sup>349</sup> *Azerbaijan*,<sup>350</sup> *Belarus*,<sup>351</sup> *Bulgaria*,<sup>352</sup> *Czech Republic*,<sup>353</sup> *Côte d’Ivoire*,<sup>354</sup> *Croatia*,<sup>355</sup> *Cuba*,<sup>356</sup>

<sup>339</sup> Working Time Act of 23 November 1995, art. 1:7(d).

<sup>340</sup> Hours of Work Act No. 605 of 1996, s. 26. As an exception to the above definition, the general collective agreements for municipal officials (civil servants) and employees stipulate that work carried out between 10 p.m. and 7 a.m. is considered night work.

<sup>341</sup> Employment (Female Workmen) Regulations 1988, No. S 101 of 26 April 1988, art. 2.

<sup>342</sup> Legislative Decree No. 532 of 26 November 1999 on provisions relating to night work, art. 2(1a).

<sup>343</sup> Labour Code No. 14 of 1975, s. E2.

<sup>344</sup> Labour Code, Decree No. 1/037 of 7 July 1993, art. 117.

<sup>345</sup> Labour Code, art. L.213-2. Night may, however, be defined in collective agreements as any period of seven consecutive hours between 10 p.m. and 7 a.m.

<sup>346</sup> Labour Standards Law No. 49 of 1947, as amended through Law No. 107 of 9 June 1995, arts. 64-3, 66(3), and Law No. 76 of 15 May 1991 concerning the welfare of workers who take care of children or other family members including childcare and family care leave, art. 16-2.

<sup>347</sup> Labour Act, 1975, s. 15(3a).

<sup>348</sup> Conditions of Employment Regulations of 24 April 1991 (S.I. 34), ss. 22(2), 23(1).

<sup>349</sup> Labour Code, Act No. 7961 of 12 July 1995, art. 80.

<sup>350</sup> Labour Code of 1 February 1999, art. 97(1).

<sup>351</sup> Labour Code of 26 July 1999 (Text No. 432), s. 117(1).

<sup>352</sup> Labour Code of 24 March 1986, as amended to 1996, art. 140(2).

<sup>353</sup> Labour Code, Act No. 65/1965, as amended up to 1996, s. 99(1).

<sup>354</sup> Act No. 96-204 of 7 March 1996 regarding night work, art. 1. Night work signifies any work performed during the period of eight consecutive hours from 9 p.m. to 5 a.m.

<sup>355</sup> Labour Act of 17 May 1995 (Text No. 758), art. 51. As regards agriculture, night work is defined as work between 10 p.m. and 5 a.m., unless national laws, regulations or collective agreements provide otherwise for specific cases. The same provision specifies that in case of shift work, working schedules should be so arranged so that no employee is engaged in night work for more than seven consecutive days.

<sup>356</sup> Decree No. 101 of 3 March 1982 establishing regulations on protection and hygiene at work, art. 129.

*Estonia*,<sup>357</sup> *Ethiopia*,<sup>358</sup> *Greece*,<sup>359</sup> *Hungary*,<sup>360</sup> *Lithuania*,<sup>361</sup> *Peru*,<sup>362</sup> *Romania*,<sup>363</sup> *Russian Federation*,<sup>364</sup> *Spain*,<sup>365</sup> *Thailand*<sup>366</sup> and *Ukraine*,<sup>367</sup> night is construed to include the eight-hour period between 10 p.m. and 6 a.m. In *Poland*,<sup>368</sup> night is also understood as stretching over eight hours between 9 p.m. and 7 a.m. In *Mozambique*,<sup>369</sup> night work is considered to be the work performed between 8 p.m. and the time of the start of normal working hours on the following day, while collective agreements may define night work as being work performed during seven of the nine hours between 8 p.m. and 5 a.m. Night work covers a nine-hour period between 8 p.m. and 5 a.m. in *Yemen*,<sup>370</sup> and between 10 p.m. and 7 a.m. in *Chile*.<sup>371</sup> Longer periods are provided for in the labour legislation of *Argentina*<sup>372</sup> and *Mexico*,<sup>373</sup> where night work is considered to be the work carried out between 8 p.m. and 6 a.m., in *Namibia*<sup>374</sup> and *Portugal*,<sup>375</sup> where night applies to the 11-hour period between

<sup>357</sup> The Working and Rest Time Act of 15 December 1993, s. 19(1).

<sup>358</sup> Labour Proclamation No. 42/1993, arts. 87(3), 91(1).

<sup>359</sup> Presidential Decree No. 88 of 7 May 1999 concerning regulation of working hours in conformity with European Council Directive 93/104, art. 2.

<sup>360</sup> Act No. 22 of 3 March 1992 on the Labour Code, art. 121(2).

<sup>361</sup> Law on Labour Protection No. I-266 of 7 October 1993, art. 45.

<sup>362</sup> Synthesis of labour legislation, as approved by Ministerial Resolution 058-97-TR of 7 July 1997, art. 16.

<sup>363</sup> Labour Code, Law No. 10 of 23 November 1972, art. 115. This period may be shortened or prolonged by no more than one hour in specific cases.

<sup>364</sup> Labour Code of 9 December 1971 as amended up to 30 April 1999, art. 48.

<sup>365</sup> Royal Legislative Decree No. 1/95 of 24 March 1995 regarding the Workers Statute Law, art. 36(1). In order to be considered as a night worker, a worker must perform not less than three hours of the workday, or alternatively, not less than one-third of the annual working hours during the period of night.

<sup>366</sup> Labour Protection Act (B.E.2541) of 12 February 1998, arts. 39, 47.

<sup>367</sup> Labour Code of 11 April 1994, art. 54.

<sup>368</sup> Act of 26 June 1974 promulgating the Labour Code, art. 137.

<sup>369</sup> Act 8/98 of 20 July 1998, art. 34.

<sup>370</sup> Labour Code, Act No. 5 of 1995, as amended by Act No. 25 of 1997, art. 73(1). No worker may be assigned to night work for more than one month.

<sup>371</sup> Labour Directorate, Circular No. 1671/64 of 18 March 1996.

<sup>372</sup> Labour Contract Law, No. 20.744 of 13 May 1976, art. 190.

<sup>373</sup> Federal Labour Act, as amended up to 1 October 1995, art. 60.

<sup>374</sup> Labour Act of 13 March 1992, s. 1.

<sup>375</sup> Decree No. 409 of 27 September 1971, as amended by Decree No. 96/99 of 23 March 1999, art. 29. Collective agreements may provide for different limits of the 11-hour period which has to comprise nonetheless at least seven consecutive hours between 10 p.m. and 7 a.m.

8 p.m. and 7 a.m., and in *Ecuador*<sup>376</sup> and *El Salvador*,<sup>377</sup> where night also covers an 11-hour period between 7 p.m. and 6 a.m. In *Sri Lanka*,<sup>378</sup> the term “night” with reference to employment of women covers at least 11 consecutive hours including the period between 10 p.m. and 5 a.m. In *Israel*,<sup>379</sup> night is defined as a period of 11 hours including the hours from midnight to 6 a.m., and in agriculture from midnight to 5 a.m. In *Botswana*,<sup>380</sup> the term “night” means a period of not less than 12 consecutive hours including the period between 10 p.m. and 6 a.m. Finally, in *Colombia*,<sup>381</sup> *Guatemala*<sup>382</sup> and *Panama*,<sup>383</sup> night work is defined as work performed between 6 p.m. and 6 a.m.

**120.** Finally, in some countries, the term “night” is not specifically defined. This is the case in *China* and *Australia* where there is no general definition of night and parties may define the term as required when negotiating awards and agreements.

## VI. The industrial undertakings subject to the prohibition of night work

**121.** Among the States parties to one or more of the night work Conventions examined here, some prohibit or restrict the night work of women only in industrial undertakings as defined in Article 1 of Conventions Nos. 4, 41 and 89. This is the case in *Angola*, *Belize*,<sup>384</sup> *Central African Republic*, *Congo*, *Cyprus*, *Gabon*, *India*, *Mali*, *Mauritania*, *Romania*, *Rwanda*, *Senegal*,<sup>385</sup> *Slovenia*, *Swaziland* and *Venezuela*. In *Ghana*<sup>386</sup> and *Kenya*, the definition of “industrial undertakings” reflects the definition in Convention No. 89, but also includes undertakings engaged in the transport of passengers or goods, in the handling of goods at docks, quays, wharves and warehouses at the exclusion of transport by hand. In *Pakistan*,<sup>387</sup> as explicitly provided under Article 11 of

<sup>376</sup> Labour Code of 29 September 1997, art. 49.

<sup>377</sup> Labour Code of 15 June 1972, as amended by Decree No. 859 of 21 April 1994, art. 161.

<sup>378</sup> Employment of Women, Young Persons and Children Act No. 43 of 1964, s. 34.

<sup>379</sup> Employment of Women Law 5714-1954, s. 2(b).

<sup>380</sup> Employment Act of 1982, s. 109(2).

<sup>381</sup> Labour Code, as modified by Law No. 141 of 1961, art. 160(2).

<sup>382</sup> Decree No. 1441 of 5 May 1961 to promulgate the consolidated text of the Labour Code, as amended up to 1995, art. 116.

<sup>383</sup> Labour Code adopted by Decree No. 252 of 30 December 1971, as amended to 1995, art. 30(2).

<sup>384</sup> Labour Act, Ch. 234, s. 161(1a).

<sup>385</sup> Order No. 5254/IGTLS/AOF of 19 July 1954 regarding conditions of work of women and pregnant women, art. 3, and Order No. 3724/IT of 22 June 1954 regarding child labour, art. 3.

<sup>386</sup> Labour Decree, 1967, s. 47.

<sup>387</sup> Factories Act, 1934, s. 2(j), and Mines Act, 1923, s. 3(f).

Convention No. 89, the term “industrial undertaking” includes only those factories covered by the Factories Act and those mines to which the Mines Act applies. The term “factory” is understood as “any premises, including the precincts thereof, whereon ten or more workers working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily carried on with or without the aid of power”, whereas “mine” means “any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all works, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine”.

**122.** Among the States not bound by any of the three instruments, *Antigua and Barbuda, Barbados, Croatia, Dominica,*<sup>388</sup> *Mauritius* and *Papua New Guinea* limit the scope of application of any prohibition or restriction on women’s night work only to industrial enterprises. In *Sri Lanka*,<sup>389</sup> in addition to the definition with respect to women, the term “industrial undertaking” with respect to night work of persons under 18 years of age also includes undertakings engaged in the transport of passengers or goods by road or rail, or in the handling of goods at docks, quays, wharves, warehouses or airports.

**123.** In contrast, several countries among those having accepted one or more of the Conventions under review appear to prohibit night work of women in all branches of economic activity rather than merely in industry. This is the case, for instance, in *Austria, Bahrain, Bolivia, Costa Rica, Djibouti, Egypt, Estonia,*<sup>390</sup> *Guinea, Guinea-Bissau, Iraq, Italy, Kuwait, Philippines,*<sup>391</sup> *Saudi Arabia, Tunisia*<sup>392</sup> and the *United Arab Emirates*. With respect to States non-parties to any of the three Conventions, the prohibition or restrictions on women’s night work cover all sectors of the economy in *Belarus, Bulgaria, China, Indonesia, Oman* and *Turkey*. In *Thailand* the prohibition applies to all sectors of economic activity except agriculture and home work which are not covered by the Labour Protection Act.

**124.** Finally, in some countries the prohibition of night work for women refers to industrial and agricultural undertakings. This is the case, for instance, in *Malaysia*,<sup>393</sup> where “agricultural undertaking” is defined as any work in which any employee is employed under a contract of service for the purposes of agriculture, horticulture or silviculture, the tending of domestic animals and

<sup>388</sup> Employment of Women, Young Persons and Children Act, 1991, art. 2.

<sup>389</sup> Employment of Women, Young Persons and Children Act, No. 47 of 1956, s. 34(1).

<sup>390</sup> The Working and Rest Time Act of 15 December 1993, s. 2.

<sup>391</sup> Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 130.

<sup>392</sup> Labour Code, Act No. 66-27 of 30 April 1966, as last amended by Act No. 96-62 of 15 July 1996, art. 1.

<sup>393</sup> Employment Act No. 265 of 1955, as amended to 1981, s. 2(1), (5).

poultry or the collection of the produce of any plants or trees. As regards the definition of “industrial undertaking”, this essentially reflects the provisions of Convention No. 89 but also includes transport of passengers or goods by road, rail, water or air, including the handling of goods at docks, quays, wharves, warehouses or airports, and any industry, establishment or undertaking, or any activity, service or work, declared to be an industrial undertaking by the Minister.

## VII. Non-applicability of the prohibition

### 1. Family undertakings

**125.** In several of the States parties to one or more of the instruments under consideration the general ban on night work of women does not apply, in accordance with common Article 3 of Conventions Nos. 4, 41 and 89, to those industrial undertakings in which only members of the same family are employed. This is the case in *Austria*,<sup>394</sup> *Belize*,<sup>395</sup> *Chad*,<sup>396</sup> *Cyprus*,<sup>397</sup> *Egypt*,<sup>398</sup> *Iraq*,<sup>399</sup> *Kenya*,<sup>400</sup> *Lebanon*,<sup>401</sup> *Philippines*,<sup>402</sup> *Swaziland*,<sup>403</sup> *Syrian Arab Republic*<sup>404</sup> and *Venezuela*.<sup>405</sup> Among the States which are not bound by any of the three instruments examined here, *Barbados*,<sup>406</sup> *Croatia*,<sup>407</sup> *Dominica*,<sup>408</sup>

<sup>394</sup> The exception refers only to family farms; see Agricultural Worker Act of 1984, as amended to 1998, s. 3.

<sup>395</sup> Labour Act, Ch. 234, s. 162(1c).

<sup>396</sup> Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code, art. 205(c).

<sup>397</sup> Employment of Women (During the Night) Law of 26 February 1932, s. 3.

<sup>398</sup> Labour Code promulgated by Act No. 137 of 1981, art. 3(c).

<sup>399</sup> Act No. 71 of 27 July 1987 promulgating the Labour Code, s. 89.

<sup>400</sup> Employment Act No. 2 of 15 April 1976, s. 24(1).

<sup>401</sup> Labour Code, Law of 23 September 1946, as amended by Law No. 536 of 24 July 1996, art. 7.

<sup>402</sup> Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 131(f).

<sup>403</sup> Employment Act No. 5 of 26 September 1980, s. 101(4d).

<sup>404</sup> Law No. 91 of 5 April 1959 establishing the Labour Code, art. 140.

<sup>405</sup> Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 212(c).

<sup>406</sup> Employment (Miscellaneous Provisions) Act of 24 March 1977, art. 6(c).

<sup>407</sup> Labour Act of 17 May 1995 (Text No. 758), art. 52(2).

<sup>408</sup> Employment of Women, Young Persons and Children Act, 1991, art. 10(1).

*Mexico*,<sup>409</sup> *Papua New Guinea*,<sup>410</sup> *Ukraine*,<sup>411</sup> and *United Kingdom (Falkland Islands)*,<sup>412</sup> *Gibraltar*,<sup>413</sup> *Guernsey*<sup>414</sup>), specifically provide in their legislation that family undertakings are exempted from the prohibition on women's night work. In *Sri Lanka*,<sup>415</sup> where women are in principle permitted to work throughout the night subject to certain conditions, night workers in family undertakings are exempted from those restrictions.

## 2. Force majeure

**126.** In *Austria*,<sup>416</sup> *Cyprus*,<sup>417</sup> *Gabon*,<sup>418</sup> *Guinea-Bissau*,<sup>419</sup> *Kenya*,<sup>420</sup> *Mali*,<sup>421</sup> *Slovakia*,<sup>422</sup> *Slovenia*,<sup>423</sup> *Swaziland*,<sup>424</sup> *Tunisia*,<sup>425</sup> *United Arab*

<sup>409</sup> Federal Labour Act, as amended up to 1 October 1995, arts. 351, 352.

<sup>410</sup> Employment Act No. 54 of 21 August 1978, s. 99(1c).

<sup>411</sup> Labour Code of 11 April 1994, art. 175. See also Law No. 3694-12 of 15 December 1993.

<sup>412</sup> Employment of Women, Young Persons and Children Ordinance, 1967, s. 2.

<sup>413</sup> Employment Ordinance. See also Employment of Women, Young Persons and Children (Amendment) Ordinance, 1978.

<sup>414</sup> Act relative to the Employment of Women, Young Persons and Children, 1926, art. 1(3).

<sup>415</sup> Employment of Women, Young Persons and Children (Amendment) Act, No. 32 of 1984, s. 2B(c).

<sup>416</sup> Federal Act of 25 June 1969 regarding women's night work, s. 5(1a). Similar provisions exist with regard to the employment of children and young persons. Where certain short-term activities become urgently necessary and no adult employees are available, the provisions on night rest cease to apply to young workers over the age of 16; see Federal Act of 1 July 1948 respecting the employment of children and young persons, as last amended by Act of 6 November 1997 (Text No. 126), s. 20. Likewise, in agricultural works, night rest periods may be reduced if this is necessary owing to extraordinary circumstances such as imminent storms or other natural phenomena likely to endanger livestock, damage produce or jeopardize forests; see Agricultural Worker Act of 1984, as amended to 1998, s. 62(3).

<sup>417</sup> Employment of Women (During the Night) Law of 26 February 1932, s. 3(a).

<sup>418</sup> Act No. 3/94 of 21 November 1994 establishing the Labour Code, art. 168(a).

<sup>419</sup> General Labour Act No. 2/86 of 5 April 1986, art. 160(2c).

<sup>420</sup> Employment Act No. 2 of 15 April 1976, s. 28(1)(i).

<sup>421</sup> Decree No. 96-178/P-RM of 13 June 1996 to make regulations under the Labour Code, art. D.189-17. The exception refers only to male workers above 16 years of age.

<sup>422</sup> Act No. 451/1992 providing for the Labour Code, s. 152(1a).

<sup>423</sup> Act on fundamental rights ensuing from labour relations, Text No. 921 of 28 September 1989, art. 45.

<sup>424</sup> Employment Act No. 5 of 26 September 1980, s. 101(4a).

<sup>425</sup> Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 68(a).

*Emirates*<sup>426</sup> and *Venezuela*,<sup>427</sup> the prohibition of night work does not apply in any case of *force majeure*, or, in the terms of common Article 4(a) of Conventions Nos. 4, 41 and 89, when in an industrial undertaking there occurs an interruption of work which it was impossible to foresee, and which is not of a recurring character. The same also applies in *Angola*,<sup>428</sup> *Belize*<sup>429</sup> and *Ghana*,<sup>430</sup> on condition that written permission from the competent authority is first obtained. In *Mauritania*<sup>431</sup> and the *Philippines*,<sup>432</sup> the prohibition does not apply in cases of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disasters or calamity. It does not apply either whenever it is necessary to prevent loss of life or property, or in cases of *force majeure* or imminent danger to public safety. Finally, in *Saudi Arabia*,<sup>433</sup> national legislation provides that by decision of the Minister of Labour exceptions may be introduced to the prohibition of night work in respect of non-industrial occupations and in cases of *force majeure*. To date, however, no ministerial decision has been issued specifying the scope and conditions of application of such exceptions.

**127.** In some countries, workers may be required to work overtime, and thus possibly during night hours, in case of *force majeure*. This is the case, for instance, in *Costa Rica*,<sup>434</sup> where workers may not be required to work more than 12 hours a day except in the case of a natural disaster or imminent risk to humans, installations, machinery, plantations or crops. Similarly, in *Nicaragua*<sup>435</sup> and *Paraguay*,<sup>436</sup> workers may not be forced to work extra hours except in case of *force majeure* in order to prevent or eliminate the consequences of natural disasters or accidents.

**128.** Among the States not bound by any of the Conventions on night work of women, *Barbados*,<sup>437</sup> *Dominica*<sup>438</sup> and the *United Kingdom (Falkland*

<sup>426</sup> Federal Law No. 8 of 1980 regarding regulation of labour relations, art. 28.

<sup>427</sup> Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 212(d).

<sup>428</sup> General Labour Act No. 2/2000 of 11 February 2000, art. 271(2a).

<sup>429</sup> Labour Act, Ch. 234, s. 162(1d).

<sup>430</sup> Labour Decree, 1967, s. 41(1a).

<sup>431</sup> Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book II, ss. 11, 12. Subject to a limit of 15 nights a year, these exceptions may be availed of if ordinary notice is given to the labour inspector before the commencement of such exceptional work.

<sup>432</sup> Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 131(a).

<sup>433</sup> Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code, art. 161.

<sup>434</sup> Labour Code of 1943, as amended up to 1996, art. 140.

<sup>435</sup> Labour Code, Act No. 185 of 30 October 1996, art. 59.

<sup>436</sup> Act No. 213 of 29 June 1993, as amended by Act No. 496 of 22 August 1998, promulgating the Labour Code, art. 203.

<sup>437</sup> Employment (Miscellaneous Provisions) Act of 24 March 1977, art. 5.

<sup>438</sup> Employment of Women, Young Persons and Children Act, 1991, art. 10(2b).

*Islands*,<sup>439</sup> *Gibraltar*,<sup>440</sup> *Guernsey*<sup>441</sup>) provide for an exception to the general ban on night work in case of *force majeure* that could not be foreseen and is not of a recurring nature.

### 3. Perishable material

**129.** In *Austria*,<sup>442</sup> *Belize*,<sup>443</sup> *Cyprus*,<sup>444</sup> *Dominica*,<sup>445</sup> *Gabon*,<sup>446</sup> *Iraq*,<sup>447</sup> *Kenya*,<sup>448</sup> *Philippines*,<sup>449</sup> *Slovakia*,<sup>450</sup> *Slovenia*,<sup>451</sup> *Swaziland*,<sup>452</sup> *Syrian Arab Republic*,<sup>453</sup> *Tunisia*,<sup>454</sup> the *United Kingdom (Falkland Islands*,<sup>455</sup> *Gibraltar*,<sup>456</sup> *Guernsey*<sup>457</sup>) and *Venezuela*,<sup>458</sup> labour legislation reflects the wording of common Article 4(b) of Conventions Nos. 4, 41 and 89 allowing for night employment of women where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration, and if such night work is necessary to preserve the said materials from certain loss. Likewise, in

<sup>439</sup> Employment of Women, Young Persons and Children Ordinance, 1967, s. 2.

<sup>440</sup> Employment Ordinance. See also Employment of Women, Young Persons and Children (Amendment) Ordinance, 1978.

<sup>441</sup> Act relative to the Employment of Women, Young Persons and Children, 1926, art. 1(3).

<sup>442</sup> Federal Act of 25 June 1969 regarding women's night work, s. 5(1b).

<sup>443</sup> Labour Act, Ch. 234, s. 162(1e).

<sup>444</sup> Employment of Women (During the Night) Law of 26 February 1932, s. 3(b).

<sup>445</sup> Employment of Women, Young Persons and Children Act, 1991, art. 10(2c).

<sup>446</sup> Act No. 3/94 of 21 November 1994 establishing the Labour Code, art. 168(b).

<sup>447</sup> Act No. 71 of 27 July 1987 promulgating the Labour Code, s. 83(1).

<sup>448</sup> Employment Act No. 2 of 15 April 1976, s. 28(1)(ii).

<sup>449</sup> Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 131(c).

<sup>450</sup> Act No. 451/1992 providing for the Labour Code, s. 152(1b).

<sup>451</sup> Act on fundamental rights ensuing from labour relations, Text No. 921 of 28 September 1989, art. 45.

<sup>452</sup> Employment Act No. 5 of 26 September 1980, s. 101(4b).

<sup>453</sup> Order No. 1663 of 28 December 1985 regarding employment of women in production, art. 5.

<sup>454</sup> Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 68(b).

<sup>455</sup> Employment of Women, Young Persons and Children Ordinance, 1967, s. 2.

<sup>456</sup> Employment Ordinance. See also Employment of Women, Young Persons and Children (Amendment) Ordinance, 1978.

<sup>457</sup> Act relative to the Employment of Women, Young Persons and Children, 1926, art. 1(3).

<sup>458</sup> Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 212(b).

*Bangladesh*,<sup>459</sup> *India*<sup>460</sup> and *Pakistan*,<sup>461</sup> the Government may adopt rules providing for exemptions from the prohibition of women working in fish-curing or fish-canning factories where the employment of women during the prohibited hours is necessary to prevent damage to or deterioration of any raw materials.

**130.** In a few countries, the prior notification or authorization from the competent authorities is required before the exception on perishable materials can be invoked. In *Bahrain*,<sup>462</sup> *Central African Republic*,<sup>463</sup> *Congo*,<sup>464</sup> *Croatia*,<sup>465</sup> *Egypt*,<sup>466</sup> *Libyan Arab Jamahiriya*,<sup>467</sup> *Togo*<sup>468</sup> and the *United Arab Emirates*,<sup>469</sup> women's night work is permitted where it is intended to avoid an imminent loss of fragile materials, or to prevent a serious accident, or to repair the consequences of such an accident, on condition that the competent authorities are promptly notified of the emergency situation and of the time necessary to complete the work. This is also the case in *Burkina Faso*,<sup>470</sup> *Mali*,<sup>471</sup> *Mauritania*,<sup>472</sup> *Niger*<sup>473</sup> and *Senegal*,<sup>474</sup> where, subject to a limit of 15 nights a year, a mere notification to the labour inspector would be needed before

<sup>459</sup> Factories Act, 1965, art. 65(2).

<sup>460</sup> Factories Act No. 63 of 23 September 1948, as amended, s. 66(2).

<sup>461</sup> Factories Act, 1934, as amended to 1987, s. 45(2).

<sup>462</sup> Ministerial Decision No. 18/1976, art. 1(4).

<sup>463</sup> Decree No. 3759 of 25 November 1954 respecting the employment of women and pregnant women, arts. 5, 6.

<sup>464</sup> Act No. 45-75 of 15 March 1975 establishing the Labour Code, art. 110.

<sup>465</sup> Labour Act of 17 May 1995 (Text No. 758), art. 52(5)-(7). However, the labour inspector who must be informed about the situation within 24 hours may still prohibit such night work if he considers that the conditions of *force majeure* are not met or that there is no real and imminent danger to raw materials.

<sup>466</sup> Ministerial Decree No. 23 of 7 February 1982, art. 1(12).

<sup>467</sup> Ministerial Order of 18 October 1972 defining the circumstances in which females may be employed on night work between 8 p.m. and 7 a.m., art. 1(5).

<sup>468</sup> Decree No. 884-55/ITLS of 28 October 1955 respecting the employment of women and children, art. 9.

<sup>469</sup> Ministerial Order No. 46/1 of 1980.

<sup>470</sup> Decree No. 5254 IGTLS/AOF of 19 July 1954 respecting the employment of women and pregnant women, art. 4.

<sup>471</sup> Decree No. 96-178/P-RM of 13 June 1996 to make regulations under the Labour Code, art. D.189-3.

<sup>472</sup> Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book II, ss. 10, 12, and Order No. 5254 IGTLS/AOF of 19 July 1954 respecting the employment of women and pregnant women, art. 4.

<sup>473</sup> Decree No. 67-126/MFP/T of 7 September 1967 on labour regulations, arts. 108, 109.

<sup>474</sup> Order No. 5254/IGTLS/AOF of 19 July 1954 regarding conditions of work of women and pregnant women, art. 4.

the commencement of the exceptional work. In *Angola*<sup>475</sup> and *Ghana*,<sup>476</sup> a written permission from the General Labour Inspectorate or the chief labour officer must first be obtained.

**131.** In a few countries, the exception is not limited to perishable materials as such, or is couched in terms susceptible to broad interpretation. In *Jordan*,<sup>477</sup> for instance, whether it is to prevent the loss of perishable goods, to avoid the risks inherent in a technical activity, to take delivery or to carry specific substances, night work falls outside the scope of the general prohibition against women's employment during the night. In *Lithuania*,<sup>478</sup> employers are entitled to organize obligatory overtime work and work on days off for employees (except for pregnant women and those who have children under 3 years of age, those who themselves are under 18 years of age, and those who are not allowed to work at night on medical grounds) when it is necessary to complete work which is already in progress and which, for unplanned or accidental obstacles connected with technical production conditions, was not possible to complete during normal work-hours and if materials or equipment would be ruined if the said work was to be interrupted.

#### **4. Women holding responsible positions of managerial or technical character**

**132.** Night work regulations in many countries include specific provisions giving effect to Article 8 of Convention No. 41, or Article 8(a) of Convention No. 89, according to which women holding responsible positions of managerial or technical character who are not ordinarily engaged in manual work are exempted from any prohibition or restriction on night work. This is the case in *Angola*,<sup>479</sup> *Austria*,<sup>480</sup> *Bahrain*,<sup>481</sup> *Belize*,<sup>482</sup> *Cameroon*,<sup>483</sup> *Central African*

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<sup>475</sup> General Labour Act No. 2/2000 of 11 February 2000, art. 271(2b).

<sup>476</sup> Labour Decree, 1967, s. 41(1b).

<sup>477</sup> Ministerial Order No. 4201 of 30 April 1997, art. 4.

<sup>478</sup> Law on Labour Protection, No. I-266 of 7 October 1993, art. 48.

<sup>479</sup> General Labour Act No. 2/2000 of 11 February 2000, art. 271(4a).

<sup>480</sup> Federal Act of 25 June 1969 regarding women's night work, s. 2(1f).

<sup>481</sup> Ministerial Decision No. 18/1976, art. 1(3).

<sup>482</sup> Labour Act, Ch. 234, s. 162(1a).

<sup>483</sup> Labour Code, Law No. 92/007 of 14 August 1992, s. 82(3a).

*Republic*,<sup>484</sup> *Chad*,<sup>485</sup> *Cyprus*,<sup>486</sup> *Democratic Republic of the Congo*,<sup>487</sup> *Dominica*,<sup>488</sup> *Egypt*,<sup>489</sup> *Gabon*,<sup>490</sup> *Guinea*,<sup>491</sup> *Guinea-Bissau*,<sup>492</sup> *Kenya*,<sup>493</sup> *Libyan Arab Jamahiriya*,<sup>494</sup> *Pakistan*,<sup>495</sup> *Philippines*,<sup>496</sup> *Slovakia*,<sup>497</sup> *Slovenia*,<sup>498</sup> *Swaziland*,<sup>499</sup> *Tunisia*,<sup>500</sup> *United Arab Emirates*<sup>501</sup> and *Venezuela*.<sup>502</sup> Similar provisions are also to be found in the legislation of *Barbados*,<sup>503</sup> *Croatia*,<sup>504</sup> *Oman*<sup>505</sup> and *Papua New Guinea*<sup>506</sup> even though these countries are not parties to either of the two instruments. In the labour laws of some countries reference is also made to “senior positions”, “posts of special authority”, or “positions requiring a high degree of confidence”. Finally, in *Sri Lanka*,<sup>507</sup> where women are in principle permitted to work throughout the night subject to certain conditions, women managers are exempted from those restrictions.

<sup>484</sup> Decree No. 3759 of 25 November 1954 respecting the employment of women and pregnant women, art. 17(a).

<sup>485</sup> Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code, art. 205(a).

<sup>486</sup> Employment of Women (During the Night) Law of 26 February 1932, s. 5.

<sup>487</sup> Order No. 68/13 of 17 May 1968 to lay down conditions of work for women and children, s. 17.

<sup>488</sup> Employment of Women, Young Persons and Children Act, 1991, art. 10(2a).

<sup>489</sup> Ministerial Decree No. 23 of 7 February 1982, art. 1(9).

<sup>490</sup> Act No. 3/94 of 21 November 1994 establishing the Labour Code, art. 168(d).

<sup>491</sup> Decree No. 1392/MASE/DNTLS/90 of 15 May 1990 respecting the employment of women and pregnant women, art. 1.

<sup>492</sup> General Labour Act No. 2/86 of 5 April 1986, art. 160(2a).

<sup>493</sup> Employment Act No. 2 of 15 April 1976, s. 28(1)(iii).

<sup>494</sup> Ministerial Order of 18 October 1972 defining the circumstances in which females may be employed on night work between 8 p.m. and 7 a.m., art. 1(4).

<sup>495</sup> Mines Act, 1923, s. 23-C(3a).

<sup>496</sup> Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 131(d).

<sup>497</sup> Act No. 451/1992 providing for the Labour Code, s. 152(1c).

<sup>498</sup> Act on fundamental rights ensuing from labour relations, Text No. 921 of 28 September 1989, art. 45.

<sup>499</sup> Employment Act No. 5 of 26 September 1980, s. 101(4c).

<sup>500</sup> Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 68(c).

<sup>501</sup> Federal Law No. 8 of 1980 regarding regulation of labour relations, art. 28.

<sup>502</sup> Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 212(e).

<sup>503</sup> Employment (Miscellaneous Provisions) Act of 24 March 1977, art. 6(a).

<sup>504</sup> Labour Act of 17 May 1995, art. 52(3).

<sup>505</sup> Ministerial Decision No. 19/74.

<sup>506</sup> Employment Act No. 54 of 21 August 1978, s. 99(1a).

<sup>507</sup> Employment of Women, Young Persons and Children (Amendment) Act No. 32 of 1984, s. 2B(a).

## 5. Women employed in health and welfare services

**133.** Another category of workers exempted from the prohibition of night work for women relates to women employed in health and welfare services who are not ordinarily engaged in manual work as set out in Article 8(b) of Convention No. 89. The legislation of several States parties to that Convention such as *Angola*,<sup>508</sup> *Austria*,<sup>509</sup> *Bahrain*,<sup>510</sup> *Bangladesh*,<sup>511</sup> *Belize*,<sup>512</sup> *Bolivia*,<sup>513</sup> *Central African Republic*,<sup>514</sup> *Democratic Republic of the Congo*,<sup>515</sup> *Congo*,<sup>516</sup> *Costa Rica*,<sup>517</sup> *Egypt*,<sup>518</sup> *Guinea*,<sup>519</sup> *Guinea-Bissau*,<sup>520</sup> *Iraq*,<sup>521</sup> *Kuwait*,<sup>522</sup> *Libyan Arab Jamahiriya*,<sup>523</sup> *Madagascar*,<sup>524</sup>

<sup>508</sup> General Labour Act No. 2/2000 of 11 February 2000, art. 271(4b).

<sup>509</sup> Federal Act of 25 June 1969 regarding women's night work, s. 2(1b), (1c), (1d), (1e).

<sup>510</sup> Legislative Decree No. 23 of 16 June 1976 promulgating the labour law for the private sector, as amended by Legislative Decree No. 14 of 1993, art. 59, and Ministerial Decision No. 18/1976, art. 1(7).

<sup>511</sup> Tea Plantation Labour Ordinance, 1962, art. 22. The prohibition on night work does not apply to midwives and nurses employed as such in any tea plantation.

<sup>512</sup> Labour Act, Ch. 234, s. 162(1b).

<sup>513</sup> Supreme Decree of 26 May 1939 to issue the Labour Code, art. 60.

<sup>514</sup> Decree No. 3759 of 25 November 1954 respecting the employment of women and pregnant women, art. 17(b).

<sup>515</sup> Order No. 68/13 of 17 May 1968 to lay down conditions of work for women and children, s. 17.

<sup>516</sup> Act No. 45-75 of 15 March 1975 establishing the Labour Code, art. 111.

<sup>517</sup> Labour Code of 1943, as amended up to 1996, art. 88(b). Nurses, social workers, domestic employees and other persons engaged in similar activities, are exceptionally permitted to work during the night for as long as their physical, mental and moral health allows it.

<sup>518</sup> Ministerial Decree No. 23 of 1982, art. 1(3).

<sup>519</sup> Decree No. 1392/MASE/DNTLS/90 of 15 May 1990 respecting the employment of women and pregnant women, art. 1.

<sup>520</sup> General Labour Act No. 2/86 of 5 April 1986, art. 160(2b).

<sup>521</sup> Act No. 71 of 27 July 1987 promulgating the Labour Code, s. 83(3b).

<sup>522</sup> Act No. 38 of 1964 regarding employment in the private sector, art. 23.

<sup>523</sup> Ministerial Order of 18 October 1972 defining the circumstances in which females may be employed on night work between 8 p.m. and 7 a.m., art. 1(6).

<sup>524</sup> Act No. 94-029 of 25 August 1995 establishing the Labour Code, art. 93.

*Mauritania*,<sup>525</sup> *Pakistan*,<sup>526</sup> *Philippines*,<sup>527</sup> *Slovakia*,<sup>528</sup> *Slovenia*,<sup>529</sup> *Syrian Arab Republic*,<sup>530</sup> *Tunisia*<sup>531</sup> and the *United Arab Emirates*,<sup>532</sup> reflects this provision allowing women to work on night shifts in hospitals and other medical care institutions. Similar provisions are also to be found in the legislation of some countries not bound by Convention No. 89 such as *Barbados*,<sup>533</sup> *Croatia*,<sup>534</sup> *Indonesia*,<sup>535</sup> *Oman*,<sup>536</sup> *Papua New Guinea*<sup>537</sup> and *Venezuela*.<sup>538</sup> In the case of *Sri Lanka*,<sup>539</sup> where night work of women is subject to only limited restrictions, women employed in health and welfare services are specifically exempted from those restrictions.

## 6. Other reasons

**134.** Many countries exclude certain occupations or types of establishments from the general prohibition of night work for women. Most of these exceptions relate to work in non-industrial undertakings, mainly in

<sup>525</sup> Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book II, s. 13. Permanent exceptions to the prohibition may be granted by the labour inspector after consultation with the staff representatives in the case of women employed in health and welfare services.

<sup>526</sup> Mines Act, 1923, s. 23-C(3b).

<sup>527</sup> Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 131(d).

<sup>528</sup> Act No. 451/1992 providing for the Labour Code, s. 152(1c).

<sup>529</sup> Act on fundamental rights ensuing from labour relations, Text No. 921 of 28 September 1989, art. 45.

<sup>530</sup> Order No. 1663 of 28 December 1985 regarding employment of women in production, art. 5.

<sup>531</sup> Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 68(d).

<sup>532</sup> Federal Law No. 8 of 1980 regarding regulation of labour relations, art. 28.

<sup>533</sup> Employment (Miscellaneous Provisions) Act of 24 March 1977, art. 6(b).

<sup>534</sup> Labour Act of 17 May 1995 (Text No. 758), art. 52(3).

<sup>535</sup> Law on Manpower Affairs, No. 25 of 3 October 1997, art. 98(2c).

<sup>536</sup> Ministerial Decision No. 19/74.

<sup>537</sup> Employment Act No. 54 of 21 August 1978, s. 99(1b).

<sup>538</sup> Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 211. This exception is only applicable to women over 18 years of age and on condition that they are given an uninterrupted rest period of at least nine hours.

<sup>539</sup> Employment of Women, Young Persons and Children (Amendment) Act No. 32 of 1984, s. 2B(b).

commerce and transport. For example, in *Bahrain*,<sup>540</sup> *Egypt*,<sup>541</sup> *Kuwait*,<sup>542</sup> *Libyan Arab Jamahiriya*,<sup>543</sup> *Morocco*,<sup>544</sup> *Syrian Arab Republic*<sup>545</sup> and the *United Arab Emirates*,<sup>546</sup> among the States parties to the Conventions reviewed here, but also in *Jordan*<sup>547</sup> and *Oman*,<sup>548</sup> among those not bound by such instruments, the prohibition on night work does not apply to women workers employed in: (i) commercial establishments such as hotels, restaurants, pharmacies, news media, coffee shops, buffet shops, theatres, cinemas, concert halls and other recreational places; (ii) jobs related to transportation of persons and goods by sea or by air, including tourist and air travel offices and airports; (iii) seasonal work or work during certain holidays; (iv) jobs involving the making of annual inventories, accounting duties, or extended working hours on the occasion of seasonal sales; and (v) specific factories of canned fruits, fish and vegetables. In *Iraq*,<sup>549</sup> women workers engaged in administrative work or employed in transport and communication services are exempt from the

<sup>540</sup> Ministerial Decision No. 18/1976, and Legislative Decree No. 23 of 16 June 1976 promulgating the labour law for the private sector, as amended by Legislative Decree No. 14 of 1993, art. 79.

<sup>541</sup> Ministerial Decree No. 23 of 7 February 1982, arts. 1, 3. Under art. 2 of the same Ministerial Decree, work by women is authorized between 8 p.m. and 10 p.m. in spinning and weaving companies and factories as well as in accountancy and law firms in the event that male workers are not available. Replying to an earlier comment made by the Committee, the Government has stated that this provision is not currently applied as it was issued under circumstances which are no longer present. Furthermore, the Government has informed that art. 1(5) which allowed for night employment of women in joint ventures established in accordance with the provisions of Act No. 43 of 1974 on Arab and foreign capital investment and free zones, as amended by Act No. 32 of 1977, was repealed by virtue of Act No. 230 of 20 July 1989 promulgating the Investment Law.

<sup>542</sup> Ministerial Order No. 5 of 1985. Under art. 2 of Act No. 38 of 1964 regarding employment in the private sector, certain categories of workers, such as workers in enterprises operating without recourse to power and employing less than five persons, and casual and temporary workers engaged for periods less than six months, are excluded from its scope of application. Following recurrent comments by the Committee as to the need to amend the above law to give effect to the provisions of the Convention, the Government has been considering for some years the adoption of a new Labour Code for the private sector covering the categories of workers currently excluded.

<sup>543</sup> Ministerial Order of 18 October 1972 defining the circumstances in which females may be employed on night work between 8 p.m. and 7 a.m., art. 1(1), (2), (3).

<sup>544</sup> Ministerial Decree of 8 March 1948, arts. 1, 2. Some of the exceptions are permanent while others are provisional in the sense that women working in certain establishments may not be totalling more than 60 to 90 days of night work every year.

<sup>545</sup> Order No. 1663 of 28 December 1985 regarding employment of women in production, art. 5.

<sup>546</sup> Ministerial Orders Nos. 46/1 and 47/1 of 1980.

<sup>547</sup> Ministerial Order No. 4201 of 30 April 1997, art. 4.

<sup>548</sup> Ministerial Decision No. 19/74.

<sup>549</sup> Act No. 71 of 27 July 1987 promulgating the Labour Code, s. 83(3a), (3c).

prohibition on night work. In *Barbados*,<sup>550</sup> the general ban on night work does not apply to persons employed in the sugar industry. In the *Republic of Korea*,<sup>551</sup> workplaces with less than four employees are not subject to the provision concerning the prohibition of women's night work. Nor does the night work prohibition apply to female workers employed in: (i) agricultural or forestry work; (ii) livestock breeding or fishing; and (iii) surveillance or intermittent work. In *Slovakia*,<sup>552</sup> women above 18 years of age may be required to perform night work when employed in veterinary, social, business, or cultural facilities, public catering, communications, customs, railways and public transport, or in livestock production. The Government of *Saudi Arabia*<sup>553</sup> has reported that the prohibition on the night employment of women may be waived for women workers employed in charitable or official institutions providing vocational or professional training, subject to prior approval by the Ministry of Labour and the Ministry of Health, and on condition that the work involved is suitable for the women's physical abilities.

**135.** In a few cases, legislated exceptions are so far-reaching that they practically nullify the very principle of preventing women from working during the night. Among the States parties to the Conventions under review, *Costa Rica*<sup>554</sup> has recently enacted legislation according to which women employed in industry are exempted from the prohibition of night work for reasons of national interest, on condition that employers meet the following requirements: (i) the working schedule involves more than one shift; (ii) the social security legislation is respected; (iii) the working conditions are not unhealthy or dangerous and all appropriate hygiene and security measures are taken; and (iv) women are provided with adequate transportation means. In *Belize*,<sup>555</sup> if, having regard to the nature of the work involved in any occupation which forms part of an industrial undertaking, the Minister considers that such occupation should be excluded from all or any of the provisions of the part of the Labour Act in which the prohibition of night work is also contained, he may, by order, declare that employment in such occupation shall be deemed not to be employment in an industrial undertaking to the extent specified in such order. Similarly, in *Guinea-Bissau*,<sup>556</sup> the prohibition of night work for women does not apply to any work

<sup>550</sup> Employment (Miscellaneous Provisions) Act of 24 March 1977, art. 6(d).

<sup>551</sup> Labour Standards Act No. 5309 of 13 March 1997, art. 61. In this connection, the *Korean Confederation of Trade Unions (KCTU)* has commented that, according to 1998 figures released by the Ministry, 28.4 per cent or 865,850 female workers out of 3,046,617 are employees at workplaces with four or less employees and may thus work at night without any limitations.

<sup>552</sup> Act No. 451/1992 providing for the Labour Code, s. 152(1c).

<sup>553</sup> Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code, art. 170.

<sup>554</sup> Decree No. 26898-MTSS of 30 March 1998, arts. 1, 2. See also Labour Code of 1943, as amended up to 1996, art. 88.

<sup>555</sup> Labour Act, Ch. 234, s. 160(2).

<sup>556</sup> General Labour Act No. 2/86 of 5 April 1986, art. 160(2d).

which because of its nature has to be carried out during the night. In *Lithuania*,<sup>557</sup> as a temporary measure, women's night work is allowed in those branches of the economy, where such work is indispensable as, for example, in trade, textiles and light industry, food industry and other spheres of production and services sector. In *Bolivia*,<sup>558</sup> the prohibition of night work for women does not apply to some unspecified "forms of work to be determined". As regards countries maintaining a prohibition on women's night work and yet not bound by any of the Conventions here examined, the Government of *Indonesia*,<sup>559</sup> has reported that certain undertakings may be authorized to employ women workers at night when the nature of the job or the type of enterprise requires continuous operation, as well as when there is a need to achieve the production target or to improve the quality of production.

**136.** Finally, it should be mentioned that according to information provided by the Government of *China*, national legislation does not provide for any exceptions to the prohibition of night work for women, but that in reality exceptions occur mainly on a voluntary basis.

## **VIII. Suspension of the prohibition**

### **1. Serious emergency – National interest**

**137.** A few countries have incorporated the provision of Article 5(1) of Convention No. 89 into their national legislation providing for the possibility of a temporary suspension of the prohibition of night work for women when in case of serious emergency the national interest demands it and after consultation with the employers' and workers' organizations concerned. This is the case in

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<sup>557</sup> Labour Code of 1 June 1972, art. 161, and Act No. I-266 of 7 October 1993 on labour protection (occupational safety), as amended to 3 November 1994, art. 48.

<sup>558</sup> Supreme Decree of 26 May 1939 to issue the Labour Code, art. 60, and Decree of 23 August 1943 regulating the General Labour Act, art. 53. In response to the Committee's repeated requests for clarifications on the exact meaning of that proviso, the Government has stated that the exemption in question relates to women employed in certain branches of activity such as the health sector, telecommunications and media, and civil or commercial aviation.

<sup>559</sup> Ministerial Regulation No. 04/MEN/1989 on procedures to employ women workers at night, arts. 2, 3, and Law on Manpower Affairs No. 25 of 3 October 1997, art. 98(3). When employing women at night, however, the employer has to keep certain safety, health and ethical standards and ensure that: (i) women workers are not pregnant; (ii) women workers are at least 18 years of age or married; (iii) transportation is provided; (iv) nutritious food and drink are provided; (v) the approval of a woman's husband/parents/guardian is obtained; (vi) local customs are respected.

*Kenya*,<sup>560</sup> *Pakistan*<sup>561</sup> and *Tunisia*,<sup>562</sup> while in *Belize*,<sup>563</sup> the suspension may only refer to male persons between 16 and 18 years of age. In *Slovakia*,<sup>564</sup> the temporary employment of women above 18 years of age may be authorized if urgent interests of society so require, and if work of a less strenuous nature is involved, with the prior consent of the trade unions and employers' organizations concerned. In *Lithuania*,<sup>565</sup> the Government may restrict the application of the law providing for the prohibitions and restrictions on night work upon declaration of an emergency military situation as well as under other special circumstances which pose a threat to national security. In the *Central African Republic*<sup>566</sup> and *Congo*,<sup>567</sup> the general ban on women's night work may be suspended, after consultation with the workers' and employers' organizations concerned, when for particularly serious economic reasons the national interest so requires. Among the countries non-parties to any of the instruments under review, *Papua New Guinea*<sup>568</sup> provides in its legislation that the Minister of Labour may, where in his opinion there exists a national emergency or it is in the national interest, suspend the prohibition of night work for women by notice published in the *National Gazette*. In *Croatia*<sup>569</sup> and *Dominica*,<sup>570</sup> only the prohibition of night employment for minors may exceptionally be suspended by decision of the Minister of Labour in case of grave danger and for the protection

<sup>560</sup> Employment Act No. 2 of 15 April 1976, s. 29.

<sup>561</sup> Mines Act, 1923, s. 46(1). It should be noted that the requirement of prior consultations with the employers' and workers' organizations concerned, as prescribed by art. 5 of Convention No. 89, was introduced by virtue of the Mines (Amendment) Act, 1967, following the Committee's persistent comments in this regard since 1954. In contrast, no consultation appears to be required under the Factories Act of 1934, art. 8 of which provides that, in any case of public emergency, provincial governments may exempt any factory from any or all of the provisions of this Act for such period as they may think fit.

<sup>562</sup> Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 71. The Government has reported that it has never made use of the suspension clause.

<sup>563</sup> Labour Act, Ch. 234, s. 162(3).

<sup>564</sup> Act No. 451/1992 providing for the Labour Code, s. 152(2).

<sup>565</sup> Act No. I-266 of 7 October 1993 on Labour Protection (Occupational Safety), as amended to 3 November 1994, arts. 5, 48.

<sup>566</sup> Decree No. 3759 of 25 November 1954 respecting the employment of women and pregnant women, art. 3. The Committee has been pointing out for the last 45 years that the above proviso authorizes departures to be made from the prohibition of night work for women which are not allowed by Convention No. 41, although they are not very different from those authorized by Article 5 of Convention No. 89.

<sup>567</sup> Act No. 45-75 of 15 March 1975 establishing the Labour Code, art. 108.

<sup>568</sup> Employment Act No. 54 of 21 August 1978, s. 99(2).

<sup>569</sup> Labour Act of 17 May 1995 (Text No. 758), art. 54(3), (4).

<sup>570</sup> Employment of Women, Young Persons and Children Act, 1991, art. 13.

of national interests. Finally, in *Sri Lanka*,<sup>571</sup> where women are in principle permitted to work throughout the night subject to certain conditions, the Minister may vary these conditions, or prohibit employment of women during the night, when in the case of serious emergency the public interest demands it.

## 2. Other reasons

138. In *Ghana*,<sup>572</sup> the prohibition of women's night employment may be suspended, upon written permission of the Chief Labour Officer, in any industrial undertaking where occurs an interruption of work by reason of strike. In *Kenya*,<sup>573</sup> the Minister of Labour may, after consultation with the Labour Advisory Board, authorize an employer to employ women or young persons up to midnight or from 5 a.m. subject to such conditions as the Minister may determine. In *Madagascar*<sup>574</sup> and *Swaziland*,<sup>575</sup> the employment of female workers in any industrial undertaking during the night may be authorized provided that the competent authority is satisfied that the undertaking in question fulfils certain requirements such as the existence of security measures and adequate means of transport, the availability of rest rooms and dining rooms, and the grant of rest and meal breaks. In *Ukraine*,<sup>576</sup> the Labour Code provides that the prohibition of night work for women applies to all spheres of public production, industrial enterprises and health care establishments with the exception of those sectors of national economy where it is necessitated by a special need and has been authorized as a temporary measure. The list of these branches of activity and types of occupations with the indication of the maximum duration of night work allowed has to be approved by the Cabinet of Ministers. However, no such list has been established so far and the term "special need" remains undefined. Similarly, in *Slovenia*,<sup>577</sup> labour legislation

<sup>571</sup> Employment of Women, Young Persons and Children (Amendment) Act No. 32 of 1984, s. 2C.

<sup>572</sup> Labour Decree, 1967, s. 41(1a). For over 20 years, the Committee has stressed the need to amend this section which is contrary to the provisions of art. 4(a) of the Convention. The Government has reported that the National Advisory Committee on Labour has recommended the deletion of the controversial provision and that the new draft Labour Code currently under preparation is expected to ensure full conformity with the provisions of the Convention.

<sup>573</sup> Employment Act No. 2 of 15 April 1976, s. 28(2).

<sup>574</sup> Act No. 94-029 of 25 August 1995 establishing the Labour Code, art. 92. Authorizations are of limited duration and may be withdrawn at any time. The Government has indicated that such authorizations have been granted in the past to free zone enterprises in order to satisfy general production requirements.

<sup>575</sup> Employment Act No. 5 of 26 September 1980, s. 101(1), (3).

<sup>576</sup> Labour Code of 11 April 1994, art. 175.

<sup>577</sup> Labour Relations Act of 29 March 1990, as amended by Act of 30 January 1991, art. 79, and Act on Fundamental Rights ensuing from Labour Relations, Text No. 921 of 28 September 1989, art. 45. See also General Collective Agreement for Commercial Activities (*Official Gazette*

permits night work schedules for women to be introduced in specific establishments if this is called for by special economic, social or similar circumstances and the Minister of Labour, Family and Social Affairs issues an authorization to this effect, while in *Algeria*,<sup>578</sup> similar authorizations may be granted if the nature and special circumstances of the work so require.

## IX. Exemptions from the prohibition and variations of the night period

### 1. Exemptions by agreement

139. In *Tunisia*,<sup>579</sup> labour legislation was amended in 1996 to introduce the possibility for exemptions from the prohibition of night work for women and variations in the duration of the night period reflecting the provisions of Article 1 of the 1990 Protocol to Convention No. 89. Similarly, the Government of *Slovenia* has reported that draft article 126 of the new Labour Relations Act, currently in the process of adoption, is expected to introduce the possibility for exemptions from the prohibition of night work at the branch level or at the level of specific establishments after consulting the most representative employers' and workers' organizations. In *Austria*,<sup>580</sup> the most recent amendments to the federal legislation on women's night work introduced in 1998 provide for exemptions that may be allowed under the terms of collective agreements subject to certain conditions; the agreements in question must apply equally to men and women, and they must provide for measures: (i) to compensate and mitigate the burden of night work; (ii) to allow transfer to day duties if the worker's health so requires; and (iii) to respect as far as possible the worker's care responsibilities for children below 12 years of age. Finally, it is interesting to note that the labour legislation of *Croatia*,<sup>581</sup> which is not bound by Convention No. 89, echoes to the letter the provisions of the 1990 Protocol and stipulates that the Labour Minister may, for important economic or social

No. 40-2205/1997), art. 20. The Government has reported that, in 1988, applications were received from 173 employers for the introduction of night work for women in industrial undertakings, and that the Ministry of Labour, Family and Social Affairs issued 155 authorizations on the basis of which approximately 8,470 women were assigned to night work. Female night working was mainly registered in poor-performing industrial branches experiencing fierce competition such as the textile industry, but also in the food, metal-processing, electrical power and wood-processing industries.

<sup>578</sup> Act No. 90-11 of 21 April 1990 respecting labour relations, art. 29.

<sup>579</sup> Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 68-2.

<sup>580</sup> Federal Act of 25 June 1969 regarding women's night work, as amended by Federal Act BGB1. I No. 5/1998, s. 4(c).

<sup>581</sup> Labour Act of 17 May 1995 (Text No. 758), art. 53(1).

reasons and upon obtaining the consent of employers' and workers' organizations, define night work differently and introduce exemptions from the prohibition for those female workers employed in certain industrial branches.

## **2. Undertakings influenced by the seasons**

**140.** In accordance with common Article 6 of Conventions Nos. 4, 41 and 89, some countries provide for the possible reduction of the night period to ten hours on 60 days of the year in industrial undertakings which are influenced by the seasons or where exceptional circumstances demand it. This is the case in *Belize*,<sup>582</sup> *Ghana*<sup>583</sup> and *Venezuela*,<sup>584</sup> but also in *Dominica*,<sup>585</sup> which is not bound by any of the three Conventions. In *Djibouti*,<sup>586</sup> labour laws simply provide that night hours may vary according to the seasons.

## **3. Shorter night rest due to climatic conditions**

**141.** A few countries have enacted legislation consistent with common Article 7 of Conventions Nos. 4, 41 and 89 which provides for the possibility of shorter night periods where the climate renders work by day particularly trying on condition that compensatory rest is accorded during the day. This is the case, for instance, in *Tunisia*<sup>587</sup> and *Venezuela*.<sup>588</sup> In *Belize*,<sup>589</sup> the Minister may grant permission for women and male persons between 16 and 18 years of age to be employed in any industrial undertaking between 7 p.m. and 11 p.m., provided that the night rest period is not less than 12 consecutive hours.

## **4. Maternity protection: Working hours and maternity leave entitlement**

**142.** According to Article 2(1) of the Protocol of 1990 to Convention No. 89, the possible variations in the duration of the night period or exemptions from the prohibition of night work which may be introduced pursuant to Article 1 cannot apply to women workers for at least 16 weeks before and after

<sup>582</sup> Labour Act, Ch. 234, s. 160(1a).

<sup>583</sup> Labour Decree, 1967, s. 47.

<sup>584</sup> Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 214.

<sup>585</sup> Employment of Women, Young Persons and Children Act, 1991, art. 12.

<sup>586</sup> Labour Code for Overseas Territories, Law No. 52-1322 of 15 December 1952, art. 113.

<sup>587</sup> Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 70.

<sup>588</sup> Decree No. 1.563 of 31 December 1973 on Labour Act Regulations, art. 215.

<sup>589</sup> Labour Act, Ch. 234, s. 162(5).

childbirth. This proviso reflects the understanding that even though the prohibition of night work for women could practically be lifted in specific branches of activity or specific establishments, minimum protection should still be provided for pregnant workers and nursing mothers and thus an unconditional prohibition of night work should continue to apply at least during the two months preceding childbirth and the two months following it.<sup>590</sup> In some countries, labour legislation already offers such protection since it provides for compulsory maternity leave of 16 weeks, or more, covering both day and night work. It appears, therefore, necessary to briefly review national laws and policies concerning maternity leave entitlement in so far as they affect women's employment during the night.

**143.** Among the States parties to the Protocol, only *Tunisia*<sup>591</sup> has so far incorporated the clause of Article 2(1) into its legislation to the effect that it is prohibited to apply any variations and exemptions from the prohibition on night work to women workers during a period of 16 weeks before and after childbirth, including at least the eight weeks before the expected date of delivery, except when a specific authorization has been obtained from the chief labour inspector at the express request of the woman worker concerned. In *Croatia*,<sup>592</sup> national legislation provides that an expectant mother, a mother with a child under 2 years of age, or a single mother with a child under 3 years of age cannot be exempted from the prohibition of night work unless she herself requests so.

**144.** In many countries, labour laws provide that women may not be employed, in day or night work, during an overall period of 12 weeks before and after childbirth. In *Barbados*,<sup>593</sup> *Colombia*,<sup>594</sup> *Dominica*,<sup>595</sup>

<sup>590</sup> It may be noted, in this respect, that as originally drafted Art. 2 of the Protocol provided for "periods of at least three months before the expected date of childbirth and at least three months after childbirth". The text was finally amended to align with Art. 7 of Convention No. 171 which referred to a period of at least 16 weeks; see ILC, 77th Session, 1990, *Record of Proceedings*, p. 26/24.

<sup>591</sup> Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 68-3.

<sup>592</sup> Labour Act of 17 May 1995 (Text No. 758), art. 53(2).

<sup>593</sup> Employment of Women (Maternity Leave) Act, 1976, s. 4(1).

<sup>594</sup> Labour Code, as amended through Law No. 50 of 28 December 1990, art. 34.

<sup>595</sup> Labour Standards (Amendment) Act 1991, arts. 17, 18, 22. The maternity leave entitlement is subject to the condition that the female employee has completed 12 months of continuous employment by an employer. While on maternity leave, the female worker has the right to receive a weekly wage that is not less than one-half of her normal weekly wage for a period of four weeks following the date on which her maternity leave commenced.

*Dominican Republic*,<sup>596</sup> *El Salvador*,<sup>597</sup> *Ghana*,<sup>598</sup> *Haiti*,<sup>599</sup> *India*,<sup>600</sup> *Israel*,<sup>601</sup> *Mauritius*,<sup>602</sup> *Mexico*,<sup>603</sup> *Norway*,<sup>604</sup> *Paraguay*,<sup>605</sup> *Rwanda*,<sup>606</sup> *Swaziland*,<sup>607</sup> *Turkey*<sup>608</sup> and *Uruguay*,<sup>609</sup> women are entitled to a 12-week paid maternity leave, including six weeks before childbirth and six weeks after. In *Seychelles*,<sup>610</sup> a female worker is entitled to a total of eight weeks' paid maternity leave of which not less than six weeks must be taken after confinement, and to four weeks' unpaid maternity leave to be taken before or after paid maternity leave. In *Ecuador*<sup>611</sup> and *Sri Lanka*<sup>612</sup> expectant workers are not allowed to work during the two weeks preceding confinement and the ten

<sup>596</sup> Act No. 16-92 of 29 May 1992 promulgating the Labour Code, art. 236.

<sup>597</sup> Labour Code of 15 June 1972, as amended up to 1994, art. 309. While absent from work on maternity leave, women have the right to receive 75 per cent of their salary.

<sup>598</sup> Labour Decree, 1967, s. 42(1). However, this period may be extended to at least eight weeks in the case of multiple births or abnormal confinement.

<sup>599</sup> Labour Code, Decree of 24 February 1984, arts. 322, 328.

<sup>600</sup> Maternity Benefit Act No. 53 of 12 December 1961, s. 5(1), (3).

<sup>601</sup> Employment of Women Law 5714-1954, s. 6(b). An adoption leave of the same duration is also provided for those women employees who decide to adopt children not older than 10 years.

<sup>602</sup> Labour Act, 1975, s. 19(1).

<sup>603</sup> Federal Labour Act, as amended up to 1 October 1995, art. 170(II) and Political Constitution of the United Mexican States, art. 123A(V).

<sup>604</sup> Act No. 4 of 4 February 1977 respecting Workers' Protection and the Working Environment, as subsequently amended, last by Act No. 19 of 28 February 1997, s. 31(1). Parents are entitled to further leave of absence during the first year of the child's life provided that the maternity and parental leave do not exceed one year altogether for both parents jointly.

<sup>605</sup> Act No. 213 of 29 June 1993, as amended by Act No. 496 of 22 August 1995, promulgating the Labour Code, art. 133.

<sup>606</sup> Labour Code, Act of 28 February 1967, art. 128.

<sup>607</sup> Employment Act No. 5 of 26 September 1980, s. 103(1).

<sup>608</sup> Labour Act No. 1475 of 25 August 1971, art. 70 and Decree No. 7/6909 of 23 July 1973 to approve Regulations respecting the Conditions of Work for Women Working Night Shifts on Industrial Works, art. 6. In addition, nursing mothers may not be employed on a night shift for a period of six months following their confinement.

<sup>609</sup> Decree No. 15.084 of 28 November 1980.

<sup>610</sup> Conditions of Employment Regulations of 24 April 1991 (S.I. 34), s. 16(1) and Conditions of Employment (Amendment) Regulations of 27 June 1991 (S.I. 45), s. 2(b).

<sup>611</sup> Labour Code of 29 September 1997, arts. 152, 153. Women workers are paid their full salary throughout the compulsory 12-week maternity leave.

<sup>612</sup> Maternity Benefits (Amendment) Act No. 43 of 1985, s. 4(b), and Maternity Benefits Ordinance, s. 10B.

weeks following childbirth, while in *Guatemala*<sup>613</sup> and *Nicaragua*,<sup>614</sup> maternity leave starts four weeks before delivery and ends eight weeks after delivery. In *Argentina*,<sup>615</sup> *Ethiopia*,<sup>616</sup> *Peru*,<sup>617</sup> *Thailand*,<sup>618</sup> *Zambia*<sup>619</sup> and *Zimbabwe*,<sup>620</sup> women have the right to take maternity leave of not more than 90 days which in most cases includes a period of 45 days before and 45 days after delivery. Finally, in *Angola*<sup>621</sup> and *Indonesia*,<sup>622</sup> labour laws provide for a fully paid compulsory leave of three months.

**145.** A few countries have legislated a maternity leave of a maximum period of 14 weeks. This is the case in *Algeria*,<sup>623</sup> *Benin*,<sup>624</sup> *Burkina Faso*,<sup>625</sup> *Cameroon*,<sup>626</sup> *Central African Republic*,<sup>627</sup> *Chad*,<sup>628</sup> *Comoros*,<sup>629</sup> *Côte d'Ivoire*,<sup>630</sup> *Democratic Republic of the Congo*,<sup>631</sup> *Gabon*,<sup>632</sup> *Guinea*,<sup>633</sup>

<sup>613</sup> Decree No. 1441 of 5 May 1961 to promulgate the consolidated text of the Labour Code, as amended up to 1995, art. 152. The 12-week, fully paid rest period is dependent on the production of a medical certificate stating that the confinement will probably take place within five weeks reckoned from the date of the issue of the certificate.

<sup>614</sup> Labour Code, Act No. 185 of 30 October 1996, art. 141. The postnatal period of the maternity leave may be extended to ten weeks in the case of multiple births.

<sup>615</sup> Labour Contract Law No. 20.744 of 13 May 1976, art. 177.

<sup>616</sup> Labour Proclamation No. 42/1993, art. 88(3).

<sup>617</sup> Law No. 26644 of 25 June 1996, art. 1 and Law No. 26790 of 1997, art. 16.

<sup>618</sup> Labour Protection Act (B.E.2541) of 12 February 1998, art. 41.

<sup>619</sup> Minimum Wages and Conditions of Employment (General) Order of 23 October 1997 (S.I. No. 119), s. 7(1). The maternity leave entitlement is subject to completion of two years of continuous service from the date of first engagement or since the last maternity leave was taken.

<sup>620</sup> Labour Relations Act (Ch. 28:01), s. 18.

<sup>621</sup> General Labour Act No. 2/2000 of 11 February 2000, art. 273(1), (6).

<sup>622</sup> Manpower Affairs No. 25 of 3 October 1997, arts. 104(3), 106.

<sup>623</sup> Act No. 83-11 of 2 July 1983 on social insurance, arts. 28, 29.

<sup>624</sup> Law No. 98-004 of 27 January 1998 to establish a Labour Code, art. 170.

<sup>625</sup> Act No. 11-92/ADP of 22 December 1992 establishing the Labour Code, art. 84.

<sup>626</sup> Labour Code, Law No. 92/007 of 14 August 1992, s. 84(2).

<sup>627</sup> Act No. 61-221 of 2 June 1961 establishing the Labour Code, art. 123.

<sup>628</sup> Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code, arts. 107, 108. In any event, an employer is prohibited from employing a woman within six weeks following her confinement.

<sup>629</sup> Labour Code, Law No. 84-018/PR of 18 February 1984, art. 121. Throughout this period, a female employee continues to receive her full salary.

<sup>630</sup> Act No. 95-15 of 12 January 1995 establishing the Labour Code, art. 23.5.

<sup>631</sup> Legislative Ordinance No. 67/310 of 9 August 1967 to establish a Labour Code, s. 112.

<sup>632</sup> Act No. 3/94 of 21 November 1994 establishing the Labour Code, art. 171.

<sup>633</sup> Ordinance No. 003/PRG/SGG/88 of 28 January 1988 issuing the Labour Code, s. 59 and Decree No. 1392/MASE/DNTLS/90 of 15 May 1990 respecting the employment of women and

*Japan*,<sup>634</sup> *Madagascar*,<sup>635</sup> *Mali*,<sup>636</sup> *Mauritania*,<sup>637</sup> *New Zealand*,<sup>638</sup> *Niger*,<sup>639</sup> *Panama*,<sup>640</sup> *Senegal*,<sup>641</sup> *Togo*<sup>642</sup> and the *United Kingdom (Gibraltar)*<sup>643</sup>). In most of these countries pregnant workers are entitled to maternity leave which begins six weeks before the expected date of confinement and ends eight weeks after delivery. In *Congo*,<sup>644</sup> the maternity leave covers 15 consecutive weeks of which nine must be taken after delivery. Similarly, in *Belgium*,<sup>645</sup> a female worker is entitled to 15 weeks of maternity leave composed of six weeks' optional leave and one week's compulsory leave before the expected date of childbirth and eight weeks' compulsory leave after childbirth.

**146.** In some countries, the maternity leave entitlement extends to or exceeds 16 weeks. National laws in *Austria*,<sup>646</sup> *Cyprus*,<sup>647</sup> *Luxembourg*,<sup>648</sup> *Spain*<sup>649</sup> and *Switzerland*,<sup>650</sup> for example, provide for a maternity leave of a total duration of 16 weeks. Similarly, in *Latvia*,<sup>651</sup> women are entitled to 56 calendar

pregnant women, art. 8. In any event, an employer is prohibited from employing a woman within six weeks following her confinement.

<sup>634</sup> Labour Standards Law No. 49 of 1947, as amended through Law No. 107 of 9 June 1995, art. 65.

<sup>635</sup> Act No. 94-029 of 25 August 1995 establishing the Labour Code, art. 98.

<sup>636</sup> Act No. 92-020 of 23 September 1992 establishing the Labour Code, art. L.179.

<sup>637</sup> Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book I, s. 33; Book II, s. 15, and Order No. 5254 IGTLs/AOF of 19 July 1954 respecting the employment of women and pregnant women, art. 19.

<sup>638</sup> Parental Leave and Employment Protection Act No. 129 of 10 July 1987, ss. 7, 9.

<sup>639</sup> Ordinance No. 96-039 of 29 June 1996 establishing the Labour Code, art. 103.

<sup>640</sup> Labour Code adopted by Decree No. 252 of 30 December 1971, as amended to 1995, art. 107.

<sup>641</sup> Labour Code, Law No. 97-17 of 1 December 1997, art. L.143.

<sup>642</sup> Ordinance No. 16 of 8 May 1974 establishing the Labour Code, art. 112.

<sup>643</sup> Employment (Maternity and Health and Safety) Regulations 1996, s. 5(1).

<sup>644</sup> Act No. 45-75 of 15 March 1975 establishing the Labour Code, arts. 113, 114.

<sup>645</sup> Labour Act of 16 March 1971, as amended, s. 39.

<sup>646</sup> Maternity Protection Act of 17 April 1979, ss. 6(1), 3(1).

<sup>647</sup> Maternity Protection Law No. 100(I) of 1997, s. 3(2), (3). In addition, a female employee who, with the intention to adopt, undertakes the care of a child less than 5 years of age has the right to a maternity leave of a total duration of 14 weeks.

<sup>648</sup> Act of 3 July 1975 on maternity protection, as amended by Act of 7 July 1998, art. 3(1), (2). The length of the postnatal maternity leave may be extended from eight to 12 weeks in the case of pre-term delivery, multiple births, or breastfeeding.

<sup>649</sup> Royal Legislative Decree No. 1/95 of 24 March 1995 regarding the Workers Statute Law, art. 48(4).

<sup>650</sup> Federal Labour Act of 13 March 1964, as amended through Federal Act of 20 March 1998, art. 35a(3).

<sup>651</sup> Labour Code, as amended to 25 October 1994, art. 173.

days of pregnancy leave and 56 calendar days of maternity leave, while in the *Republic of Moldova*,<sup>652</sup> the maternity leave covers a period of 70 calendar days before and 56 calendar days after delivery. In *Slovenia*,<sup>653</sup> a female worker exercises the right to maternity leave in the shape of absence from work for 105 days. Women workers are entitled to maternity leave of 120 days in *Brazil*<sup>654</sup> and *Portugal*,<sup>655</sup> and of 140 days in the *Russian Federation*.<sup>656</sup> Likewise, prenatal and postnatal leave may not exceed four months in *Costa Rica*,<sup>657</sup> and four to six months in *Viet Nam*.<sup>658</sup> In *Chile*,<sup>659</sup> *Cuba*<sup>660</sup> and *Venezuela*,<sup>661</sup> women have a right to 18 weeks of maternity leave covering six weeks before confinement and 12 weeks after. In the *Czech Republic*,<sup>662</sup> and *Slovakia*,<sup>663</sup> pregnant workers are entitled to 28 weeks of maternity leave, while in *Hungary*,<sup>664</sup> the maternity leave entitlement extends to 24 weeks. Finally, in the case of *Poland*,<sup>665</sup> the duration of maternity leave varies depending on the family situation of the expectant mother; a female employee is thus entitled to 16 weeks of maternity leave for the first birth, 18 weeks for the second, and 26 weeks in the case of multiple births.

**147.** In contrast, in other countries, women workers are entitled to maternity leave of a much shorter length ranging from 30 days to ten weeks. In

<sup>652</sup> Labour Code, Law of 25 May 1973, as amended up to 23 July 1998, art. 173.

<sup>653</sup> Labour Relations Act of 29 March 1990, arts. 80, 83.

<sup>654</sup> Act No. 8.213/91, art. 71.

<sup>655</sup> Act No. 142/99 of 31 August 1999, art. 10. At least 90 days of the maternity leave must be taken after childbirth.

<sup>656</sup> Labour Code of 9 December 1971, as amended to 30 April 1999, arts. 165, 167, 168.

<sup>657</sup> Labour Code of 1943, as amended up to 1996, art. 95. In case of adoption, foster mothers are also entitled to a three-month paid leave.

<sup>658</sup> Labour Code of 23 June 1994, art. 114(1).

<sup>659</sup> Labour Code of 7 January 1994, arts. 195, 198.

<sup>660</sup> Maternity Law No. 1263 of 14 January 1974, art. 2.

<sup>661</sup> Labour Act of 27 November 1990, as modified by Act of 19 June 1997, arts. 385, 387. In addition, a female employee who decides to adopt a child less than 3 years of age has the right to a maternity leave of a maximum period of ten weeks.

<sup>662</sup> Labour Code, Act No. 65/1965, as amended up to 1996, ss. 157(1), 158(1), 160(1).

<sup>663</sup> Act No. 451/1992 providing for the Labour Code, ss. 157(1), 158(1). The maternity leave may extend to 37 weeks in the case of multiple births.

<sup>664</sup> Act No. 22 of 3 March 1992 on the Labour Code, art. 138(1). After the expiry of maternity leave and upon the employee's request, unpaid leave may be allocated for the purpose of raising the child until the child reaches the age of 3 or the age of 10 in the case of a chronically ill or seriously disabled child.

<sup>665</sup> Act of 26 June 1974 promulgating the Labour Code, art. 180. Women adopting a child are equally entitled to 18 weeks of maternity leave.

the case of *Bahrain*,<sup>666</sup> *Bolivia*,<sup>667</sup> *Egypt*,<sup>668</sup> *Guinea-Bissau*,<sup>669</sup> *Iraq*,<sup>670</sup> *Kenya*,<sup>671</sup> *Republic of Korea*,<sup>672</sup> *Kuwait*,<sup>673</sup> *Lebanon*,<sup>674</sup> *Libyan Arab Jamahiriya*,<sup>675</sup> *Malaysia*,<sup>676</sup> *Syrian Arab Republic*,<sup>677</sup> *Tunisia*,<sup>678</sup> *United Arab Emirates*<sup>679</sup> and *Yemen*,<sup>680</sup> pregnant employees have the right to pre- and post-confinement leave totalling from 45 to 70 days. In *Bangladesh*,<sup>681</sup> *Pakistan*,<sup>682</sup> *Papua New Guinea*<sup>683</sup> and the *Philippines*,<sup>684</sup> women may not be employed during the six weeks following the day of delivery. In *Singapore*,<sup>685</sup> maternity

<sup>666</sup> Legislative Decree No. 23 of 16 June 1976 promulgating the Labour Law for the Private Sector, as amended by Legislative Decree No. 14 of 1993, art. 61.

<sup>667</sup> Supreme Decree of 26 May 1939 to issue the Labour Code, art. 61.

<sup>668</sup> Labour Code promulgated by Act No. 137 of 6 August 1981, arts. 154, 156.

<sup>669</sup> General Labour Act No. 2/86 of 5 April 1986, art. 158(1), (2). The maternity leave is of a total duration of 60 days, 30 of which must be taken after childbirth.

<sup>670</sup> Act No. 71 of 27 July 1987 promulgating the Labour Code, s. 84(1). A woman worker is entitled to 62 days' maternity leave at full pay.

<sup>671</sup> Employment Act No. 2 of 15 April 1976, s. 7(2). A woman employee is entitled to two months' maternity leave with full pay provided that a woman who has taken two months' maternity leave forfeits her annual leave in that year.

<sup>672</sup> Labour Standards Act No. 5309 of 13 March 1997, art. 72(1).

<sup>673</sup> Act No. 38 of 1964 regarding employment in the private sector, art. 25. According to art. 27 of the Bill to amend Law No. 38 of 1964, the maternity leave period is expected to increase to 45 days as from the date of confinement.

<sup>674</sup> Labour Code, Law of 23 September 1946, as amended by Law No. 536 of 24 July 1996, art. 28.

<sup>675</sup> Labour Code, Act No. 58-2970 of 1 May 1970, art. 43. A female employee who has completed six months' continuous service with the same employer is entitled to 50 days' maternity leave on half pay.

<sup>676</sup> Employment Act No. 265 of 1955, as amended to 1981, s. 37(1a).

<sup>677</sup> Labour Code, art. 133.

<sup>678</sup> Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 64.

<sup>679</sup> Federal Law No. 8 of 1980 regarding regulation of labour relations, art. 30.

<sup>680</sup> Labour Code, Act No. 5 of 1995, as amended by Act No. 25 of 1997, art. 45.

<sup>681</sup> Maternity Benefit Act, 1939, arts. 3, 4.

<sup>682</sup> West Pakistan Maternity Benefit Ordinance, 1958, ss. 3, 4(1).

<sup>683</sup> Employment Act No. 54 of 21 August 1978, s. 100(1c), (3), (5b). Maternity leave is unpaid leave and may only be granted if the employee has been employed by the employer for not less than 108 days within the period of the last 12 months, or for not less than 90 days within the period of the last six months.

<sup>684</sup> Labour Code, art. 133(a).

<sup>685</sup> Employment Act (Ch. 91), as amended to 30 April 1996, s. 76(1a), (2), (4). During the maternity leave, female employees are entitled to receive payment at their gross rate of pay provided that they have served an employer for not less than 180 days immediately before confinement and that they do not have two or more children.

leave is set at eight weeks, while in *Jordan*<sup>686</sup> and *Saudi Arabia*,<sup>687</sup> it extends to ten weeks including rest before and after delivery.

### 5. Maternity protection: Employment and income security

**148.** In conformity with the principles laid down in maternity protection Conventions Nos. 3, 103 and 183, but also in line with the provision of Article 2(3a) of the Protocol of 1990 to Convention No. 89, practically all member States whose legislation has been reviewed for the purposes of the present survey protect pregnant or nursing mothers against arbitrary dismissal for reasons connected with pregnancy or childbirth. The aim is, of course, to ensure that maternity and motherhood do not turn into sources of discrimination in employment. However, the scope of the employment security and income maintenance guarantees offered to expectant and child-rearing workers in different countries presents noticeable variations.

**149.** Among the States parties to the Protocol, only *Tunisia*<sup>688</sup> has enacted legislation to the effect that the employment contract of a woman worker may not be terminated during a period of eight weeks preceding and eight weeks following childbirth, or any additional period of medically certified leave which may be necessary for the health of the mother or the child. According to the labour laws of several countries, the protection conferred to women workers against maternity-related dismissal applies only during the maternity leave period. This is the case, for instance, in *Albania*,<sup>689</sup> *Bangladesh*,<sup>690</sup> *Bahrain*,<sup>691</sup> *Botswana*,<sup>692</sup> *Burkina Faso*,<sup>693</sup> *Burundi*,<sup>694</sup> *Cameroon*,<sup>695</sup> *Central African*

<sup>686</sup> Labour Code, Law No. 8 of 1996, arts. 70, 67.

<sup>687</sup> Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code, art. 164.

<sup>688</sup> Act No. 66-27 of 30 April 1966, as amended by Act No. 96-62 of 15 July 1996, promulgating the Labour Code, art. 68-4.

<sup>689</sup> Labour Code, Act No. 7961 of 12 July 1995, art. 107.

<sup>690</sup> Maternity Benefit Act, 1939, art. 7.

<sup>691</sup> Legislative Decree No. 23 of 16 June 1976 promulgating the Labour Law for the Private Sector, as amended by Legislative Decree No. 14 of 1993, art. 63.

<sup>692</sup> Employment Act No. 29 of 1982, s. 121. During her absence from work in connection with confinement, a female worker is entitled to payment of a maternity allowance of not less than 25 per cent of her usual pay.

<sup>693</sup> Act No. 11-92/ADP of 22 December 1992 establishing the Labour Code, art. 84.

<sup>694</sup> Labour Code, Decree No. 1/037 of 7 July 1993, arts. 122, 123. Female employees are entitled to half of their average salary during maternity leave.

<sup>695</sup> Labour Code, Law No. 92/007 of 14 August 1992, s. 84(2).

*Republic,*<sup>696</sup> *Comoros,*<sup>697</sup> *Congo,*<sup>698</sup> *Cuba,*<sup>699</sup> *Democratic Republic of the Congo,*<sup>700</sup> *Djibouti,*<sup>701</sup> *Ghana,*<sup>702</sup> *Guinea,*<sup>703</sup> *India,*<sup>704</sup> *Japan,*<sup>705</sup> *Republic of Korea,*<sup>706</sup> *Libyan Arab Jamahiriya,*<sup>707</sup> *Malaysia,*<sup>708</sup> *Mali,*<sup>709</sup> *Mauritania,*<sup>710</sup>

<sup>696</sup> Act No. 61-221 of 2 June 1961 establishing the Labour Code, art. 123.

<sup>697</sup> Labour Code, Law No. 84-018/PR of 18 February 1984, art. 121.

<sup>698</sup> Act No. 45-75 of 15 March 1975 establishing the Labour Code, art. 113.

<sup>699</sup> Labour Code of 28 December 1984, art. 56. National legislation further provides that a working woman will receive during her maternity leave financial aid equal to the sum of the average weekly salary which she has received during the 12 months immediately prior to the leave; see Maternity Law No. 1263 of 14 January 1974, as amended by Law No. 61 of October 1987, art. 10. By virtue of resolution No. 10/91 of 16 July 1991 of the State Committee on Labour and Social Security, women are entitled to an extended maternity leave, paid at 60 per cent of their salary until the child reaches the age of six months, or unpaid for any period beyond that time.

<sup>700</sup> Legislative Ordinance No. 67/310 of 9 August 1967 to establish a Labour Code, s. 112.

<sup>701</sup> Labour Code for Overseas Territories, Law No. 52-1322 of 15 December 1952, art. 116. Female employees are entitled to half of their average salary during maternity leave.

<sup>702</sup> Labour Decree, 1967, s. 43.

<sup>703</sup> Ordinance No. 003/PRG/SGG/88 of 28 January 1988 issuing the Labour Code, s. 63. A pregnant woman may only be dismissed for serious misconduct not connected to pregnancy, or, if for reasons unrelated to pregnancy, the employer finds it impossible to retain her contract in effect.

<sup>704</sup> Maternity Benefit Act No. 53 of 12 December 1961, s. 12(1). In addition, the dismissal of a woman at any time of her pregnancy, if the woman but for such dismissal would have been entitled to maternity benefit, may not have the effect of depriving her of the maternity benefit.

<sup>705</sup> Labour Standards Law No. 49 of 1947, as amended through Law No. 107 of 9 June 1995, art. 19(1). Dismissal is also unlawful within 30 days after the expiry of maternity leave. However, this provision does not apply in cases where the employer pays compensation for termination, or when the continuance of the enterprise has been made impossible by a natural disaster or other unavoidable cause, and the prior approval of the competent administrative officer has been obtained.

<sup>706</sup> Labour Standards Act No. 5309 of 13 March 1997, art. 30(2). Dismissal is also unlawful within 30 days after the expiry of maternity leave. This restriction does not apply, however, if a natural disaster, calamity, or other unavoidable circumstances prevent the continuance of a business, the approval of the Minister of Labour has been obtained, and the worker concerned is sufficiently compensated.

<sup>707</sup> Labour Code, Act No. 58-2970 of 1 May 1970, art. 45.

<sup>708</sup> Employment Act, 1955, ss. 37(1a), (2a), (2b), 40(3), 42(1). A female employee is entitled to receive from her employer a maternity allowance for the period of maternity leave if: (i) she has been employed by the employer at any time in the four months immediately before her confinement; and (ii) if she has been employed by the employer for a period of, or periods amounting in the aggregate to, not less than 90 days during the nine months immediately before her confinement. A female employee who is eligible for maternity allowance shall be entitled to receive from her employer for each day of the eligible period a maternity allowance at her ordinary rate of daily pay.

<sup>709</sup> Act No. 92-020 of 23 September 1992 establishing the Labour Code, art. L.183.

<sup>710</sup> Act No. 63-023 of 23 January 1963 to establish a Labour Code, Book I, s. 33.

*Mexico*,<sup>711</sup> *Morocco*,<sup>712</sup> *Niger*,<sup>713</sup> *Pakistan*,<sup>714</sup> *Philippines*,<sup>715</sup> *Rwanda*,<sup>716</sup> *Senegal*,<sup>717</sup> *Singapore*,<sup>718</sup> *Sri Lanka*,<sup>719</sup> *Syrian Arab Republic*,<sup>720</sup> *Togo*<sup>721</sup> and *Turkey*,<sup>722</sup> where no employer may give notice of dismissal to a female employee while she is on maternity leave or on such a day that the notice will expire during her absence.

**150.** In some countries, protection against unfair dismissal extends beyond the maternity leave period and covers either part or the full length of pregnancy as well as a period of childcare after childbirth which may vary from one to three years. In *Bulgaria*,<sup>723</sup> *Czech Republic*,<sup>724</sup> *Estonia*,<sup>725</sup> *Latvia*,<sup>726</sup> *Republic of*

<sup>711</sup> Federal Labour Act, as amended up to 1 October 1995, art. 47; Political Constitution of the United Mexican States, art. 123A (XXII); Social Security Act of 19 December 1995, art. 101. Expectant mothers are entitled to an economic subsidy equivalent to 100 per cent of their last daily salary during a period of 42 days before the delivery and 42 days after.

<sup>712</sup> Decree of 2 July 1947 to regulate employment, art. 18.

<sup>713</sup> Ordinance No. 96-039 of 29 June 1996 establishing the Labour Code, art. 103.

<sup>714</sup> West Pakistan Maternity Benefit Ordinance, 1958, s. 7(a).

<sup>715</sup> Labour Code, Presidential Decree No. 442 of 1 May 1974, as amended, art. 137(2), (3), and Social Security Act No. 8282 of 1997, s. 14-A. A female worker who has paid at least three monthly contributions in the 12-month period immediately preceding the semester of her delivery or miscarriage has the right to receive a daily maternity benefit equivalent to 100 per cent of her average daily wage for 60 days.

<sup>716</sup> Labour Code, Act of 28 February 1967, arts. 128, 130. Women workers are paid two-thirds of the wage they were earning at the time of interruption of the work.

<sup>717</sup> Labour Code, Law No. 97-17 of 1 December 1997, art. L.143.

<sup>718</sup> Employment Act (Ch. 91), as amended to 30 April 1996, s. 81.

<sup>719</sup> Maternity Benefits Ordinance, ss. 10, 10A(1), and Maternity Benefits (Amendment) Act No. 43 of 1985, s. 3(1a). A woman worker is entitled to maternity benefit at the prescribed rate for the entirety of the period of two weeks immediately preceding her confinement and of the period of ten weeks immediately following her confinement.

<sup>720</sup> Law No. 91 of 5 April 1959 establishing the Labour Code, arts. 134, 135. A female worker receives 70 per cent of her wages, on condition that she has completed seven consecutive months of service with the same employer before ceasing work.

<sup>721</sup> Ordinance No. 16 of 8 May 1974 establishing the Labour Code, art. 112.

<sup>722</sup> Labour Act No. 1475 of 25 August 1971, arts. 17(I), 70.

<sup>723</sup> Labour Code of 24 March 1986, as amended to 1996, art. 333(1). The daily pecuniary indemnification for female workers who are pregnant or have recently given birth may be set at 90 per cent of the daily average wage, but not less than the national minimum daily wage, for an overall term of 135 days.

<sup>724</sup> Labour Code, Act No. 65/1965, as amended up to 1996, ss. 48(1d), 157(3). National legislation specifies that while on maternity leave female employees do not have right to wages and that their financial security is regulated according to statutory provisions on sickness insurance.

<sup>725</sup> Employment Contracts Act of 15 April 1992, s. 92.

<sup>726</sup> Labour Code, as amended to 25 October 1994, art. 178.

*Moldova*,<sup>727</sup> *Romania*,<sup>728</sup> *Russian Federation*,<sup>729</sup> *Ukraine*<sup>730</sup> and *Venezuela*,<sup>731</sup> for instance, it is unlawful to terminate the employment contract of a pregnant woman or a woman raising a child under 3 years of age. In *Angola*,<sup>732</sup> *Bolivia*,<sup>733</sup> *Chile*,<sup>734</sup> *Greece*,<sup>735</sup> *Mozambique*<sup>736</sup> and *Viet Nam*,<sup>737</sup> the employment contract of a female worker may not be terminated during her pregnancy, or up to one year after childbirth, or before the end of her maternity leave. In *Gabon*,<sup>738</sup> no employer may dismiss a female employee on account of her pregnancy or confinement, while any dismissal notified during the 15 months following delivery is subject to the prior authorization of the labour inspector. In *Papua New Guinea*<sup>739</sup> and *Zambia*,<sup>740</sup> the employer may not terminate the employment of a female worker from the time he is notified or becomes aware of the pregnancy of the employee until six months after confinement, while in *Brazil*<sup>741</sup> and *Cyprus*,<sup>742</sup> women workers are protected from arbitrary dismissal from the time their pregnancy is confirmed until five months following childbirth. In *Austria*,<sup>743</sup> *Ethiopia*,<sup>744</sup> *Germany*<sup>745</sup> and

<sup>727</sup> Labour Code, Law of 25 May 1973, as amended up to 23 July 1998, art. 178. In case of dismissal, there is an obligation to offer alternative employment to the woman worker concerned.

<sup>728</sup> Labour Code, Law No. 10 of 23 November 1972, arts. 146, 152(2), 156(3). The amount of maternity compensation is calculated on the basis of the average monthly salary and varies according to seniority and the number of children.

<sup>729</sup> Labour Code of 9 December 1971, as amended up to 30 April 1999, art. 170.

<sup>730</sup> Labour Code of 11 April 1994, art. 184. In case of dismissal, there is an obligation to offer alternative employment to the woman worker concerned.

<sup>731</sup> Labour Act of 27 November 1990, as modified by Act of 19 June 1997, art. 384.

<sup>732</sup> General Labour Act No. 2/2000 of 11 February 2000, arts. 278, 272(1d).

<sup>733</sup> Act No. 975 of 2 May 1988 on employment stability of the pregnant worker, art. 1.

<sup>734</sup> Labour Code of 7 January 1994, arts. 201, 174.

<sup>735</sup> Presidential Decree No. 176/97 respecting measures to improve the security and health at work of working women during pregnancy, after birth, or during breastfeeding, art. 10. See also Law No. 1483/84, art. 15.

<sup>736</sup> Act No. 8/98 of 20 July 1998, art. 75(1d).

<sup>737</sup> Labour Code of 23 June 1994, art. 111(3).

<sup>738</sup> Act No. 3/94 of 21 November 1994 establishing the Labour Code, art. 170.

<sup>739</sup> Employment Act No. 54 of 21 August 1978, s. 100(1b), (2).

<sup>740</sup> Minimum Wages and Conditions of Employment (General) Order of 14 October 1997, s. 7(4).

<sup>741</sup> Transitional Constitutional Provisions Act, art. 10 (II) (b). During the leave the woman is entitled to her full salary, or if this fluctuates to her average wage over the previous six months of work.

<sup>742</sup> Maternity Protection Law No. 100(I) of 1997, s. 4.

<sup>743</sup> Maternity Protection Act of 17 April 1979, ss. 10(1), 14(1).

<sup>744</sup> Labour Proclamation No. 42/1993, arts. 87(5), 29(3).

<sup>745</sup> Federal Act on Maternity Protection of 17 January 1997, ss. 9, 11.

*Switzerland*,<sup>746</sup> an employer may not terminate the contract of employment of a female worker while she is pregnant and up to four months after confinement. In *Belgium*,<sup>747</sup> *Côte d'Ivoire*<sup>748</sup> and *Luxembourg*,<sup>749</sup> a female worker is protected against dismissal during the period of pregnancy and up to 12 weeks following delivery. In *Colombia*,<sup>750</sup> any termination of employment of a female worker occurring during her pregnancy and up to three months after childbirth is presumed to be motivated by reason of her pregnancy and is prohibited.

**151.** In several other countries, female workers may not be dismissed throughout the period of pregnancy and maternity leave. This is the case in *Australia*,<sup>751</sup> *Barbados*,<sup>752</sup> *Benin*,<sup>753</sup> *Chad*,<sup>754</sup> *China*,<sup>755</sup> *Ecuador*,<sup>756</sup>

<sup>746</sup> *Code des Obligations*, Federal Act of 30 March 1911 supplementing the Swiss Civil Code, art. 336c(1c).

<sup>747</sup> Labour Act of 16 March 1971, as amended, s. 40. A pregnant worker may be dismissed only for reasons unconnected with the physical state resulting from her pregnancy or confinement. The onus of proof of those reasons rests with the employer.

<sup>748</sup> Act No. 95-15 of 12 January 1995 establishing the Labour Code, arts. 23.3, 23.5. Any dismissal which would be notified regardless of the worker's state of pregnancy may be quashed on production of a medical certificate proving her medical condition, except when the termination of contract is due to the serious offence of the worker concerned.

<sup>749</sup> Act of 3 July 1975 on maternity protection, as amended by Act of 7 July 1998, art. 10(1). Any notification of termination in breach of that proviso is null and void; the female worker may, within 15 days, request the competent labour tribunal to confirm the nullity of such termination.

<sup>750</sup> Labour Code, as amended through Law No. 50 of 28 December 1990, art. 35.

<sup>751</sup> Workplace Relations Act, 1996, s. 170CK(2f), (2h).

<sup>752</sup> Employment of Women (Maternity Leave) Act, 1976, s. 6(1a), (2).

<sup>753</sup> Law No. 98-004 of 27 January 1998 to establish a Labour Code, arts. 170, 171. Female workers have the right to receive in full their salary throughout the maternity leave period.

<sup>754</sup> Act No. 038/PR/96 of 11 December 1996 establishing the Labour Code, art. 112.

<sup>755</sup> Decree of 28 June 1988 of the State Council adopting Regulations governing Labour Protection for Female Staff Members and Workers, art. 4. For protection against dismissal, see also Act of 3 April 1992 concerning the Protection of Rights and Interests of Women, art. 26.

<sup>756</sup> Labour Code of 29 September 1997, art. 153.

*El Salvador*,<sup>757</sup> *Finland*,<sup>758</sup> *Israel*,<sup>759</sup> *Madagascar*,<sup>760</sup> *New Zealand*,<sup>761</sup> *Nicaragua*,<sup>762</sup> *Peru*,<sup>763</sup> *Poland*,<sup>764</sup> *Seychelles*,<sup>765</sup> *Slovenia*,<sup>766</sup> *Spain*<sup>767</sup> and *Swaziland*.<sup>768</sup> In *Saudi Arabia*,<sup>769</sup> the employer may not dismiss a female worker while she is on maternity leave and during the six months preceding the presumed date of her confinement. In *Argentina*,<sup>770</sup> pregnant workers are protected against unfair dismissal during a period of seven-and-a-half months before and another seven-and-a-half months after childbirth provided that they have informed their employer of their pregnancy and of the presumed date of delivery. Similarly, in *Jordan*<sup>771</sup> and *Lebanon*,<sup>772</sup> women workers may not be

<sup>757</sup> Labour Code of 15 June 1972, as amended by Decree No. 859 of 21 April 1994, art. 113.

<sup>758</sup> Employment Contracts Act No. 320 of 1970, s. 37(5). For the period of maternity and parental leave workers are entitled to maternity and parental allowances specified according to the Sickness Insurance Act. In contrast, according to the Employment Contracts Act, the employer is not bound to pay the worker remuneration for the duration of the maternity leave. However, a number of collective agreements contain stipulations on the employer's obligation to pay remuneration during maternity leave. The duration of paid maternity leave varies by agreement. In the collective agreements for salaried employees in the industrial or the banking and insurance sectors the duration of paid maternity leave is usually three months. In both state and municipal administration, the duration of paid maternity leave is 72 weekdays.

<sup>759</sup> Employment of Women Law 5714-1954, s. 9(a), (b1).

<sup>760</sup> Act No. 94-029 of 25 August 1995 establishing the Labour Code, arts. 97, 98.

<sup>761</sup> Parental Leave and Employment Protection Act No. 129 of 10 July 1987, s. 49(1).

<sup>762</sup> Labour Code, Act No. 185 of 30 October 1996, arts. 141, 144. While on maternity leave, women workers are paid at the rate of their last or best salary.

<sup>763</sup> Legislative Decree No. 728 of 21 March 1997, art. 29(e).

<sup>764</sup> Act of 26 June 1974 promulgating the Labour Code, art. 177(1). However, there is no legal restriction for the termination of a contract with an employee taking care of a child under 4 years of age. During maternity leave, a woman worker has the right to maternity allowance amounting to 100 per cent of remuneration.

<sup>765</sup> Employment Act of 28 February 1995, ss. 57(3), 76(2a).

<sup>766</sup> Labour Relations Act of 29 March 1990, as amended by Act of 30 January 1991, arts. 36b, 36c, 36d.

<sup>767</sup> Royal Legislative Decree No. 1/95 of 24 March 1995 regarding the Workers Statute Law, arts. 53(4), 55(5), as amended by Law No. 39/99 of 5 November 1999 regarding reconciliation of work and family life, art. 7(2), (3).

<sup>768</sup> Employment Act No. 5 of 26 September 1980, s. 105(1a).

<sup>769</sup> Royal Decree No. M/21 of 15 November 1969 establishing a Labour Code, arts. 164, 167, 168. During her absence on maternity leave, a female employee is entitled to half pay if she has been in the employer's service for one year or more, and to full pay if she has been in the employer's service for three years or more.

<sup>770</sup> Labour Contract Law No. 40.744 of 13 May 1976, art. 178.

<sup>771</sup> Labour Code, Law No. 8 of 1996, art. 27.

<sup>772</sup> Labour Code, Law of 23 September 1946, as amended by Law No. 536 of 24 July 1996, arts. 29, 52. According to the terms of new draft legislation, art. 52 would be amended to prohibit the termination of employment of women workers during the entire pregnancy period.

given notice of termination of employment as from the fifth and sixth month of pregnancy, respectively. Finally, in *Indonesia*<sup>773</sup> and *Thailand*,<sup>774</sup> labour laws proscribe in general terms the termination of the employment of a female employee because of her pregnancy.

**152.** In a few countries, labour laws do not provide for a general prohibition against the dismissal of expectant workers or nursing mothers but rather lay down guarantees of procedural fairness in order to avoid abuses. In *Portugal*,<sup>775</sup> for instance, in order to terminate the employment of a female worker who is pregnant, has recently given birth or is breastfeeding, the employer must request the prior opinion of a tripartite committee exercising its functions in the sphere of equal opportunities between men and women; in case of unfavourable opinion, he may only proceed by way of a judicial decision that recognizes the existence of a valid justification for dismissal. In *Haiti*,<sup>776</sup> any termination of contract of a pregnant woman or breastfeeding mother needs to be communicated to the Labour Directorate with a view to obtaining a specific authorization. Similarly, in the *Dominican Republic*,<sup>777</sup> the dismissal of a female worker for reasons of pregnancy is null and void, and the employer is obliged to inform the Labour Department of the termination of the employment contract of any pregnant worker, or of a worker who has recently given birth, for it to determine whether the dismissal was motivated by considerations related to pregnancy. Failing to conform to such procedure, the employer has to pay the worker an indemnity equal to five monthly salaries. In *Costa Rica*<sup>778</sup> and *Guatemala*<sup>779</sup> pregnant or breastfeeding workers may not be dismissed except if the dismissal was motivated by the worker's serious misconduct in which case the matter has to be brought before the labour tribunals or the inspectorate for decision. In *Uruguay*,<sup>780</sup> women workers dismissed on pregnancy or maternity grounds have the right to receive a special compensation equal to six monthly salaries.

<sup>773</sup> Ministerial Regulation No. 03/MEN/1996 on prohibition of termination of employment for women due to be married, pregnant, or give birth, art. 2.

<sup>774</sup> Labour Protection Act (B.E.2541) of 12 February 1998, art. 43.

<sup>775</sup> Act No. 4/84 of 5 April 1984 concerning maternity and paternity protection, as amended by Act No. 142/99 of 31 August 1999, art. 24.

<sup>776</sup> Labour Code, Decree of 24 February 1984, arts. 320, 326, 330. Throughout the maternity leave, a woman worker receives her full salary as if she continued working, while the employer is under the obligation to maintain her post available during her absence.

<sup>777</sup> Act No. 16-92 of 29 May 1992 promulgating the Labour Code, art. 233.

<sup>778</sup> Labour Code of 1943, as amended up to 1996, art. 94.

<sup>779</sup> Decree No. 1441 of 5 May 1961 to promulgate the consolidated text of the Labour Code, as amended up to 1995, art. 151(c). In case the employer fails to comply with established procedure, the female worker may claim her reinstatement and the payment of due wages.

<sup>780</sup> Law No. 11.577 of 14 October 1950 and Decree of 1 June 1954.

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**153.** In conclusion, the Committee notes that the three night work Conventions under review appear to have a diminishing impact on national laws and practice. Not only does the level of ratification remain low, but a number of countries formally bound by the Conventions have ceased to apply them and often have contradictory legislation. Several others are in the process of introducing legislative amendments lifting all restrictions on women's night work, while others have announced their intention to proceed to their denunciation. National laws are replete with permissive clauses and exceptions which often bear little relevance to those allowed by the Conventions. Some States have even introduced such broad exceptions that they practically nullify the basic principles of the prohibition of night work for women. Even among States parties to the Conventions, the standard of an 11-hour night rest period is hardly applied. In most cases, the ban on women's night working extends to an average of seven to nine hours.

**154.** In contrast, the prohibition of night work for minors, including girls and young women, would seem to enjoy much broader acceptance. In the great majority of countries, young persons under 18 years of age may not be assigned to night work with only limited exemption possibilities, mainly for reasons of vocational training.

**155.** Also by contrast, in almost all countries, night work is proscribed for expectant or nursing mothers, either as a consequence of the absence from work during the maternity leave period or for a longer period before and after childbirth.