Democratic Republic of Congo

SENATE

LAW DRAFT N° … AMENDING AND SUPPLEMENTING THE LAW N° 015/2002 OF 16 OCTOBER 2002–LAYING DOWN THE LABOUR CODE

Palais du Peuple
Kinshasa/Lingwala
November 2012

EXPLANATORY MEMORENDOM

Since the entry into force of the new Labour Code on 16 October 2002, difficulties have been encountered in its implementation. Some of its provisions have indeed proven ill-adapted for the socio-economic development and international labour standards. It consequently became necessary for them to be more consistent with reality.

The National Labour Council, tripartite consultative body bringing together the Government's representatives, Employers and Workers, has identified the problematic provisions and proposes the amendment of the latters.

It should be recalled that the Labour Code, as promulgated by the Act n° 015/2002 of 16 October 2002, contains 334 articles.

The modifications brought by this law text concern 17 articles, specifically the articles 1, 6, 7, 62, 104, 119, 121, 125, 129, 190, 197, 216, 217, 218, 219, 241, 321.

Amongst the modifications, should be retained:

- The right for the worker to defend themselves when facing a possible redundancy;
- The setting of the legal working hours to eight hours per day;
- The possibility for women to work night shifts;
- The possibility for pregnant women to suspend the contract of employment, without this action being considered as ground for redundancy;
- The possibility for a foreigner, under meeting certain conditions, to be appointed as director of a union.

Such is the economy of this law text.

LAW

TITLE I
GENERAL PROVISIONS

CHAPTER I
SCOPE

The National Assembly and the Senate passed;

The President of the Republic enacts/promulgate the Act, which is as follows:

The articles 1, 6, 7, 62, 104, 119, 121, 125, 129, 190, 197, 216 to 219, 241 and 321 of the 015/2002 law of October 16, 2002 laying down the Labour Code, are/have been modified and completed as follow:

Art. 1.

This Code shall be applicable to all workers and all employers, including those of public companies exercising their professional activity over the entire territory of the Democratic Republic of Congo, regardless of their race, gender, marital status, or the place of conclusion of the contract, subject to the contract being performed in the Democratic Republic of Congo. It shall also be applicable to contracted workers of State public services.

It shall only apply to marine and inland boatmen where specific regulations concerning them are silent or where these regulations expressly refer to the Code.

Shall be excluded from the scope of this Code:

1) The magistrate, judges in Commercial Court and the associate judges in Labour Court;

2) The career offices of public services of the State governed by “general statutes”,

3) The career officers or civil servants of public services of the State governed by specific statutes,

4) The elements of the Armed Forces of the Democratic Republic of Congo, the Congolese National Police and National Service.

CHAPTER II
THE RIGHT TO WORK

Art. 2.

Working is a right and a duty for everyone. It is a moral obligation for all of those who are not prevented from doing so by reason of age or inability to work certified by a physician.

Forced or compulsory labour is prohibited.

Any work or service exacted under from any person under the menace of penalty and for which said person has not offered themselves voluntarily, shall also fall under the prohibition.

Art. 3.

All the worst forms of child labour are abolished.

The expression “the worst forms of child labour” includes notably:

a) all forms of slavery or similar practices, such as child sale and trafficking, debt bondage and serfdom as well as forced or compulsory labour, including forced or compulsory recruitment of children intended for their use in armed conflicts,
b) the use or procuring or offering of a child for prostitution, production of pornographic material for pornographic performances or obscene dances,
c) the use, recruitment or offering of a child for illicit activities, notably for the production and trafficking of drugs,
d) works which, by nature or circumstances in which they are carried out, are likely to harm the health, safety, dignity or morality of the child.

Art. 4.

A national committee shall be hereby established to combat the worst forms of child labour. This committee has the following objectives:

- developing a national strategy to eradicate the worst forms of child labour,
- monitoring the implementation of the strategy and assessing the degree of application of the recommended measures.

Art. 5.

An inter-ministerial order of the ministers in charge respectively of labour and social welfare and social and family affairs, shall determine the organisation and the operating of the national committee to combat against the worst forms of child labour.

CHAPTER III
CAPACITY TO CONTRACT

Art. 6.

The capacity of a person to contract its services shall be governed by the law of the country to which they belong, or failing knowledge of their nationality, by the Congolese law.

For the purpose of this Code, the capacity to contract shall be set at sixteen years of age, subject to the following provisions:

a) a person 15 years of age may be employed or retained in service only with the express permission of the Labour inspector and of the parent or guardian,
b) however, the opposition of the Labour inspector and the parent or guardian to the exception set out in subparagraph a) hereinabove may be set aside by the Court when justified by circumstances or by fairness,
c) a person 15 years of age may be employed or retained in service only for the performance of light and healthy work as provided for by a decision of the Minister in charge of labour and social welfare, pursuant to Article 38 of this Code,
d) any other form of recruiting shall be prohibited on the whole national territory;
e) where no birth certificate is available, the monitoring of the age of the worker as described in subparagraphs a) and b) hereinabove shall be exercised under the conditions set by order of the minister in charge of labour and social welfare.

CHAPTER IV
DEFINITIONS

Art. 7.

For the purposes of this Code, shall be understood under the term:

a) worker:
any individual of age to contract, regardless of their gender, martial status and nationality, who has committed themselves to place their professional activity, in exchange for remuneration, under the supervision and authority of a natural or legal person, public or private, by means of a contract of employment.
To determine the status of worker, neither the legal status nor that of the employee shall be taken into account.

b) employer:
any natural or legal person, governed by public or private law, who uses the services of one or several workers on the basis of a contract of employment.

c) contract of employment:

any agreement, written or oral, by which a person, the worker, is committed to provide the other person, the employer, with manual or other work, under the direct or indirect supervision and authority of the latter, in exchange for remuneration.

d) company:
any economic, social, cultural, community, philanthropic organisation or one of specific legal form, individual or collective property, whether or not for profit which may include one or several establishments.

e) establishment:
spatially-individual centre of activity, with its own objective from a technical standpoint and using the services or one or several workers who perform a task under a unique supervision.

A given establishment always pertains to a company.

A unique and independent establishment is both a company and an establishment.

f) recruitment:
any transaction carried out to ensure or provide someone else with the workforce of other people who do not spontaneously offer their services.

g) apprenticeship contract:
the contract under which a natural or legal person, the master, is obligated to give or provide a methodical and complete vocational training to another person, the apprentice, and by which the latter is obligated in return to comply with instructions to be received and execute the works which will be entrusted to him as part of the apprenticeship.

h) remuneration:
sum representative of all gains likely to be evaluated in cash and determined by agreement or legal and regulatory provisions which are due under a contract of employment, by an employer to a worker.
It includes:
- salary or wages,
- commissions,
- cost of living allowance,
- bonuses,
- profit sharing,
- amounts paid as bonus,

- amounts paid for additional services,
- the value of benefits in kind,
- leave allowance or compensation in lieu of leave,
- amounts paid by the employer during work incapacity and during the period before and after childbirth.

Are not elements of remuneration :
- health care,
- housing allowance or housing in kind,
- statutory family allowances,
- transport allowance,
- travel expenses and benefits granted exclusively to help the worker perform their duties.

i) working day:
each weekday with the exception of weekly rest days and statutory public holidays.

j) duration of services:
total time:

- work services provided under the last employer and substituted employers during the last contract of employment and the previous contract of employments,
- leaves, including maternity leave,
- work incapacity in case of accident or illness up to six consecutive months and without limitation in case or accident or occupational disease,
- travels between two periods of service.

k) worker's family:
- spouse,
- children as defined by the Family Code,
- children adopted by the worker,
- children for whom the worker has guardianship or legal paternity,
- children for whom the worker is maintenance debtor in accordance with the provisions of the Family Code.
- A child shall be taken into account if unmarried and:

    - until majority, in general,
    - until the completed 25th year of age, if engaged in full-time study,
    - without an age limit where the child is incapable of gainful activity due to their physical or mental state and where the worker maintains the child.

Does not enter into account the minor child bound by an employment or apprenticeship contract which entitles them to a normal remuneration.

In all legal and regulatory texts pertaining to social security covering both public and private sectors, the term "child" must be interpreted in accordance with Article 7 subparagraph k) of this Code without prejudice to more favourable provisions to the recipient of social benefits.

TITLE II
PROFESSIONAL
TRAINING AND DEVELOPMENT

CHAPTER I
PROFESSIONAL
TRAINING AND DEVELOPMENT

Art. 8.

Any public or private employer is obliged to provide training, development or professional adaptation of his workers.

For this purpose, the employer may use any means at their disposal over the entire territory of the Democratic Republic of Congo by the National Vocational Training Institute.

Art. 9.

A decree of the President of the Republic, upon proposal of the minister in charge of labour and social welfare after consulting the National Labour Council, shall determine the policy on vocational training and development for employment and set the operating rules of vocational training centres.

Art. 10.

The minister of Labour and Social Welfare shall be in charge of implementing the policy on vocational training and development. The minister shall formulate, with the assistance of the National Vocational Training Institute, professional organisations, and, where appropriate, licensed training centres, the program of vocational training to promote and facilitate:

- job creation,
- improving productivity and economic development,
- professional mobility,
- professional integration of young people,
- reintegration of injured workers.

CHAPTER II
NATIONAL VOCATIONAL
TRAINING INSTITUTE

Art. 11.

A National Vocational Training Institute, INPP in acronym, shall be hereby established, with a legal personality.

Its head office shall be located in Kinshasa.

It may, among others, acquire and dispose of movable and immovable property.

Its liabilities are guaranteed by the State.

Art. 12.

The Institute, through association of interests and responsibilities of the State, employers and of workers, shall be collaborate in order to promote, create and implement existing or new means necessary for professional qualification of the national labour force and to coordinate their operating.

Its action shall be intended especially for career development and advancement of workers in employment, the quick training of new workers in employment, quick training of new adult workers, learning in employment, vocational training of recipients of a general knowledge base and professional adaptation of those who completed technical or vocational-school type training.

Its action shall also tend to facilitate the conversion of vocational qualification of workers who have to change their profession or trade and the reintegration of incapacitated workers into the workforce.

Art. 13.

The National Vocational Training Institute shall be responsible for, among others:

a) creating and maintaining cooperation between all agencies providing technical and vocational training, especially by establishing and distributing all necessary information on training opportunities for each profession,

b) collaborating in the determination of professions for which qualification standards are deemed necessary or desirable, in the determination of the nature and degree of professional qualifications and in the organisation of exams designed for their evaluation,

c) collaborating with public services and professional organisations interested in the establishment of a job classification and determination of professional qualifications at every level of employment, for each trade or profession,

d) providing its experience to the Employment Department and the National labour council regarding study problems of labour market trends, evaluation of current and future needs of workers at different levels of the job classification, and job placements,

e) promoting the adequate system of professional orientation and screening and participating in its operating,

f) collaborating with the ministry of Education and all professional and cultural organisations interested in vocational training activities.

Art. 14.

The technical supervision of the State over the National Vocational Training Institute shall be exercised by the minister in charge of labour and social welfare.

The overall organisation, administration and management of the Institute shall be performed by a board of directors of tripartite form involving state representatives, employers and workers.

Art. 15.

Resources of the National Vocational Training Institute shall consist of:

a) annual State subsidy,

b) employers' monthly contribution proportional to the amount paid by them to their employees in the previous quarter.
The contribution rate is set for each period of 3 years by joint order of the ministers in charge respectively of labour and social welfare, finance and budget, after consulting the National Labour Council.
In the absence of assent, the contribution rate is set by decree of the President of the Republic upon proposal of the ministers in charge respectively of labour and social welfare, finance and budget,

c) contributions, gifts and bequests as may be allocated,

d) exceptional payments for special services and in particular for supplying teaching materials, conventionally set by the Institute and employers.

Art. 16.

A statement of the sums owed to the National Vocational Training Institute as contributions provided for in the preceding Article, certified by the minister of labour and social welfare or their representative, shall be deemed as allowing the levies under Articles 106 and following of the Code of civil procedure.

Art. 17.

All provisions of the Ordinance-Law 206 of 29 June 1964 establishing the National Vocational Training Institute and of the implementing texts which are not contrary to the provisions of this Title shall remain in force.

TITLE III
APPRENTICESHIP CONTRACT

CHAPTER I
GENERAL PROVISIONS

Art. 18.

No one may take on minor apprentices if they are not:

- at least 18 of age,
- recognised as being of good character,
- sufficiently qualified to give proper training to apprentices or to have another person in his service with the required qualifications provide this training.

No master, where they do not live in family or community, may provide housing to underage girls as apprentices.

CHAPTER II
FORM AND EVIDENCE
OF THE APPRENTICESHIP CONTRACT

Art. 19.

Any apprenticeship contract must be in writing and contain the stipulations listed in Article 20 of this Code.

It shall be prepared in the official or national language known to the apprentice.

It shall be signed by the master, the apprentice and parents, or where appropriate by the guardian or person authorised by the parents or competent judge.

It shall be free from stamp duty and registration.

Il est exempt de tout droit de timbre et d'enregistrement.

Art. 20.

The apprenticeship contract shall be prepared taking into account the practices and customs of the profession.

It must compulsorily mention:

1) the first, middle and last names, age, profession, nationality and residence of the master, address and name of the business or public service which contracts with the apprentice,
2) the first, middle and last names, age, profession, nationality and residence of the apprentice,
3) the first, middle and last names, age, profession, nationality and residence of the father and mother of the apprentice, the guardian or in their absence, the person authorised by the parents of competent judge,
4) the date of commencement and term of the contract, the latter is determined in accordance with the profession practices but may not exceed four years,
5) compensation in cash which may be granted,
6) the indication of the profession or trade taught and that of vocational courses which the master is compelled to have the apprentice take, either inside the establishment or outside.

Art. 21.

The apprenticeship contract is prepared in four copies at least and submitted for approval to the National labour council, as stipulated in Title IX of this Code.

The request for approval shall be the master's obligation.

As long as the contract has not been submitted for approval or when the approval has been withdrawn, the apprentice's services are considered as being supplied pursuant to a contract of employment respectively at the date of conclusion of the contract and of the withdrawal of approval.

Art. 22.

The authority which approves the contract must:

a) require the production by the master of a medical certificate, of less than three months, stating that the future apprentice is able to work in the profession or trade chosen, and issued under the conditions laid down by the order referred to in Article 38 of this Code,

b) certify the identity of the apprentice and the contractual compliance with the provisions of this Code and the implementing texts,

c) verify that the apprentice is not bound by any previous agreement, has not been in higher education or undertaken a specialised training constituting a presumption of professional capacity exclusive from apprenticeship,

d) remit, after consultation, a copy of the contract to each party and for the minor apprentice, to their representative, keep the third copy and send the fourth to the local labour inspector.

Art. 23.

Without approval or in case of refusal, the apprenticeship contract is voidable. In case of cancellation or doubt on the purpose of the unwritten contract, the services of the apprentice shall be considered as being supplied pursuant to a contract of employment.

Where it appears to the labour inspector that the conditions laid down pertaining to the regulation of apprenticeship are no longer met, the approval may be withdrawn by the National labour council, upon justified report of the labour inspector.

In such a case, the contract shall cease ipso jure.

CHAPTER III
OBLIGATIONS OF THE MASTER AND OF THE APPRENTICE

Section 1
Obligations of the apprenticeship master

Art. 24.

The apprenticeship primarily gives rise to the following obligations for the master, towards the apprentice:

1) to teach or have them taught in a methodical, progressive and complete manner the trade or profession which is the subject of the contract, and make available the tools and material necessary for this teaching,
2) to treat them with proper respect, uphold decency and morality during the performance of the contract, and ensure their safety and health, taking into account of the circumstance and the nature of the work,
3) to promptly notify their parents or guardian in case of illness, absence or of gross negligence or of any fact likely to justify their intervention,

4) to give them, upon expiry of each period of one year of effective services, a leave allowance of a duration in compliance with that set in Article 141 of this Code and to pay them, where applicable, compensation in lieu as provided for in the contract,
5) to provide them, for the duration of the contract, in case of illness or accident, with the benefits due to workers pursuant to this Code, with the exception of those due to the worker's family and those relating to salary,
6) to issue at the end of the training, a certificate of completion of apprenticeship, in compliance with the model determined by order of the minister in charge of labour and social welfare.

Art. 25.

The master has the obligation to pay the apprentice under the conditions laid down by order of the minister in charge of labour and social welfare, after consulting the National labour council.

This remuneration takes the form of an indemnity which should be gradually increased over the years of apprenticeship.

All obligations and guarantees provided for in this Code regarding to salary shall be associated to this remuneration.

Section 2

Obligations of the apprentice

Art. 26.

The apprenticeship primarily includes the following obligations for the apprentice:

1) to comply with the orders of the master or their agent,
2) carry out the work given in the agreed conditions and, generally assist the master or their agent to the extent of the apprentice's abilities and strengths,
3) monitor the observance of conventions and morality while performing the contract,
4) return in good condition tools, goods, merchandise or any item entrusted by the master, except for damage and wear due to normal use, or loss by accident,
5) refrain from anything that might harm the interests of the master, their own safety or that of their companions and keep trade or business secrets which they learn of in the course of their apprenticeship,
6) undergo medical examinations required by the master, as well as assessment tests to monitor their vocational training.

Art. 27.

The apprenticeship contract may include that the apprentice shall be obliged, after completion of the apprenticeship, to pursue their professional activity on behalf of their former master for a period not exceeding two years.

Failure to comply with this obligation by one of the parties shall cause the concerned party, subject to damages, to give notice or where applicable to pay compensation in lieu of notice in accordance with the provisions of Article 63 of this Code.

CHAPTER IV

SUSPENSION AND

TERMINATION OF THE APPRENTICESHIP CONTRACT

Art. 28.

The apprenticeship contract is suspended for the duration of the work incapacity of the apprentice as a result of illness or accident.

However, the apprenticeship master may terminate the contract where the work incapacity lasted six months or where the illness or accident lead to the assumption that the apprentice may not fulfil their obligations for an uninterrupted period of six months, except in the event of an occupational accident or disease.

Art. 29.

The apprenticeship contract shall terminate prematurely ipso jure:

a) due to the death of the master or apprentice,
b) due to the call or recall of the apprentice or master [to serve] under the flag,
c) due to the conviction of the master to a criminal sentence of more than three months without suspension,
d) for the minor girls apprentices living in the master's house, in the event of divorce of the latter, of the death of the master's wife or of any woman in the family who ran the house at the time the contract was concluded.

Art. 30.

Any apprenticeship contract may be terminated at the request of either party for the following reasons:

a) where one of the parties breached the terms of the contract,
b) due to serious or frequent violation of the requirements of Articles 24 and 36 of this Code or of other statutory or regulatory provisions pertaining to the working conditions of apprentices,
c) where the master moves their residence outside of the jurisdiction in which they resided and practiced at the time the contract was concluded,
d) where the master or apprentice incurs a conviction to a criminal sentence of more than two months,
e) the marriage of the apprentice or possibly the acquisition of the status of head of family following the death of their father. In such case, the termination of the contract can only intervene at the apprentice's request themselves.

Art. 31.

Where the apprentice is a minor, and without prejudice to the exercise of parental authority or guardianship, any termination of the apprenticeship contract at the initiative of the master is subject to the suspensive condition of its approval by the local labour inspector. The request for approval shall be addressed to the labour inspector by registered letter or transmission log.

The labour inspector must notify their decision within one month from the day on which the master disclosed the proposed measure; failing this, the inspector is supposed to approve it.

The decision of the labour inspector may be subject to hierarchical or judicial review under the conditions set by order of the minister in charge of labour and social welfare, after consulting the National labour council.

Art. 32.

The request to terminate the contract based on subparagraphs a), b) and d) of Article 30 hereinabove shall only be admitted by the labour inspector in the forms and within the time limits set forth in Article 72 of this Code.

The request based on subparagraphs c) and e) of the same Article shall only be admissible for three months.

CHAPTER V
SUPERVISORY MEASURES

Art. 33.

The local labour inspector shall be responsible for supervising the performance of the apprenticeship contract; they may be assisted by a technician to assess the education received by the apprentice in the establishment.

Any termination of apprenticeship contract must be brought to the attention of the labour inspector and of the National labour council.

CHAPTER VI
MISCELLANEOUS PROVISIONS

Art. 34.

Apprentices are considered workers and benefit from all other provisions of this Code which are not contrary to the specific provisions of this Title.

Art. 35.

Orders of the minister in charge of labour and social welfare, after consulting the National labour council, may determine the categories of companies in which a maximum percentage of apprentices in relation to the number of workers shall be imposed.

Orders of the minister in charge of labour and social welfare may limit the number of apprentices or the right to train apprentices in establishments where inadequate vocational training was notified.

TITLE IV
CONTRACT OF EMPLOYMENT

CHAPTER I
GENERAL PROVISIONS

Art. 36.

Contracts of employment shall be freely entered into, subject to the provisions of this Code.

The date of entry into force and the term of this contract, the nature and purpose of the worker's services, the place(s) where they are to be performed, remuneration, additional benefits, reimbursable expenses and all other conditions are determined by the contract, in compliance with statutory provisions and subject to compliance with collective agreements, corporate rules and local practices.

The contract may include more favourable conditions for the worker.

Art. 37.

Contracts of employment may not derogate from the public order provisions defined by the laws and regulations in force.

Any contractual clause providing the worker with benefits lower than those prescribed by this Code shall be null and void.

Art. 38.

The performance of a contract of employment is contingent on a certificate of the worker's capacity to work.

Work capacity is certified by a medical certificate issued by an occupational physician or, failing this, by any other doctor. In the absence thereof, a provisional certificate is issued by a nurse, subject to the employee undergoing a medical examination within three months after the commencement of work services.

A person medically unfit to work for the work which they are intended or to which they are affected may not be hired or maintained in service.

An order of the minister in charge of labour and social welfare determines the conditions of application of this Article, as well as exemptions which may be admitted regarding light and healthy work authorised for persons aged 15 to less than 16 years.

CHAPTER II
CONTRACT DURATION AND
PROBATIONARY CLAUSE

Art. 39.

Any contract of employment is of definite or indefinite duration.

Art. 40.

A fixed-term contract shall be a contract which is concluded for a fixed period, either for a specific work, or to replace a temporarily unavailable worker.

However, in the case of overnight commitment, if the worker has already worked twenty-two working days over a period of two months, the new commitment made prior to the expiry of the two months is, under pain of penalty, deemed concluded for an indefinite period.

Art. 41.

The fixed-term contract may not exceed two years. This duration may not exceed one year, where the worker is married and separated from their family or where the worker is widowed, separated or divorced and separated from the children of whom they must take custody.

No worker may conclude with the same employer or same business more than two fixed-term contracts nor renew more than once a fixed-term contract, except in the case of seasonal work, well-defined work and other works defined by order of the minister in charge of labour and social welfare, after consulting the National labour council.

The performance of any contract concluded in violation of the provision of this Article or the continuation of service in cases not provided for in the preceding paragraph shall ipso jure be understood as the performance of a permanent contract of employment.

Art. 42.

When the worker is contracted for a permanent position in the company or establishment, the contract must be concluded for an indefinite period.

Any contract concluded for a fixed-term period in violation of this Article shall be deemed concluded for an indefinite period.

Art. 43.

Any contract of employment may contain a probationary clause. This probationary clause must be in writing.

The duration of the probation may not exceed the time necessary to assess the contracted personnel, given the professional technique and practices.

In all cases, the probation's duration may not exceed one month for the general worker without specialty nor six months for the other workers. If the probationary clause provides for a longer duration, it is reduced ipso jure to one month or to six months, as applicable.

Extension of services beyond the maximum duration automatically confirms the existence of the contract of employment.

Time and travel commitments shall not be included in the maximum duration of the probation.

The rights to travel back and forth of the contracted worker under probation shall be governed by Articles 147 and 156 of this Code.

CHAPTER III
FORM AND EVIDENCE
OF THE CONTRACT OF EMPLOYMENT

Art. 44.

The contract of employment must be in writing and prepared in the form agreed on by the parties so long as it contains the stipulations stated in Article 212 of this Code.

In the absence of written support, the contract shall be presumed, until proved otherwise, to have been concluded for an indefinite period.

This Article shall not be applicable in the case of overnight commitment.

An order of the minister in charge of labour and social welfare shall determine the conditions of application of this Article.

Art. 45.

The contract in writing which does not expressly mention its conclusion for either a fixed period, a specific work, or to replace a worker temporarily unavailable, or which does not indicate, in the latter case, the reasons and circumstances of the replacement, shall be deemed to have been concluded for an indefinite period.

Art. 46.

The employer must give the worker at least two working days prior to signing the contract, a copy of the draft contract and make available all essential documents to which it refers. Where the employer fails to fulfil this obligation, the worker may terminate the contract within thirty days of its conclusion without notice or compensation.

Art. 47.

The employer must submit any written contract for approval by the National labour council, following the conditions set by order of the minister in charge of labour and social welfare.

Where the employer fails to fulfil this formality entitles the worker to terminate the contract of employment at any time without notice and the worker may claim, where applicable, damages.

The contract of employment that the National labour council has refused to endorse ends ipso jure.

Art. 48.

Courts may order the communication of the copy of the contract kept by the authority which endorsed it.

Art. 49.

In the absence of written support, the work may, even where writing is required, support by all remedies, the existence and content of the contract as well as all subsequent amendments.

CHAPTER IV
OBLIGATIONS OF THE WORKER AND THE EMPLOYER

Section 1
Obligations of the worker

Art. 50.

The worker must personally perform their work, under the conditions, at the time and place agreed.

The worker must act according to the orders given by the employer or the agent, for the performance of the contract. They must comply with the rules set in the establishment, workshop or place where they must perform their work.

Art. 51.

The worker must refrain from anything which may harm either their own safety or that of their colleagues or third parties.

They must comply with conventions and morals during the performance of the contract and treat fairly any worker under their command.

Art. 52.

The worker is under obligation to return to the employer in good condition the goods, products and cash, and in general everything which was entrusted to them.

The worker shall not be responsible for neither damage nor wear due to normal use nor accidental loss.

They must keep trade and corporate business secrets and refrain from engaging or collaborating in any act of unfair competition, even after expiry of the contract.

Art. 53.

Any clause prohibiting the worker after the contract's end from operating a personal business, from joining for the purpose of operating a business or from entering in a contract with other employers shall be null and void.

However, when the contract was terminated after gross negligence of the worker or when the latter ended it without gross negligence of the employer, the clause shall take effect so long as the worker has, from customers or their employer's business secrets, such knowledge that the worker could seriously harm the latter, so long as the prohibition refers to activities the worker carried out with the employer, so long as its duration does not exceed one year from the contract's termination.

The non-competition clause may provide for a contractual penalty to be imposed on the worker violating the prohibition. At the request of the latter, the competent court shall bring to a fair amount the excessive contractual penalty.

Art. 54.

During the performance of the contract of employment, depending on the seriousness of the misconduct, the worker shall be liable to one of the following disciplinary sanctions:

- blame,
- reprimand,
- layoff within the limits and under the conditions set in paragraph 5 of Article 57 of this Code,
- dismissal with notice,
- dismissal without notice in the cases and under the conditions set in Articles 72 and 74 of this Code.

The disciplinary sanction shall be imposed while taking into account, among others, the seriousness, the repetition of the misconduct or the malice which inspired it.

Section 2

Obligations of the employer

Art. 55.

The employer must provide the worker with the agreed employment and under the conditions, in the time and place agreed; the employer shall be responsible for the performance of the contract of employment concluded by any person on their behalf.

They must manage the worker and ensure that work is done under adequate conditions, with regards both to safety and to health and dignity of the worker.

They must give the worker, appointed as assessor by the labour court, the dignity and the time necessary to complete their tasks.

This time is deemed and paid as working time.

The employer must keep at the disposal of workers' representatives within the meaning of Article 255, a copy of this Code for consultation purposes.

Art. 56.

The employer shall bear the expenses resulting from the workers' journey from their domicile to their workplaces and vice versa.

An order of the minister in charge of labour and social welfare shall set the distance from which this obligation is incurred and the conditions of implementation of this Article.

CHAPTER V
SUSPENSION OF THE CONTRACT

Art. 57.

The following shall be grounds to suspend the contract of employment:

1) work incapacity resulting from an illness or accident, pregnancy or childbirth and its aftermaths,
2) call or recall under the flag and the voluntary enrolment in time of war in the Congolese armed forces or of an allied State,
3) services provided due to military requisitions or those of public interest taken by the Government,
4) the holding of public offices or fulfilment of civic obligations,
5) up to fifteen days twice a year, the disciplinary sanction of layoff where this sanction is provided for either by the contract of employment or by collective agreement or corporate rules,
6) the strike or lock-out, if these occur in accordance with the procedure of collective labour disputes resolution as defined in Articles 303 to 314 in this Code or the procedure defined by the applicable collective agreement,
7) the worker's imprisonment,
8) force majeure, where its effect if to prevent, temporarily, one of the parties from fulfilling their obligations.
   Force majeure occurs when the event occurred is unpredictable, inevitable, due to neither party and completely prevents any possibility to fulfil contractual obligations.
   Force majeure is certified by the labour inspector.

Art. 58.

An order of the minister in charge of labour and social welfare, after consulting the National labour council, shall determine the rights and obligations of the parties in each of the suspension cases stated in the preceding Article, paragraphs 2 to 7.

Art. 59.

Apart from the obligations provided for in Articles 105, 106, 130, 146 to 156 and 178 of this Code, parties released of their obligations towards each other throughout the duration of the suspension of the contract.

Art. 60.

A contract may not be terminated while suspended, subject to the following:

a) in case of illness or accident, apart from the case of occupational illness or accident, the employer may notify the worker of the contract termination after six continuous months of incapacity to perform the contract.

The contract ends the day after that of the notice of termination.
In such case, the employer shall be required to pay a termination indemnity corresponding to the notice due in case of permanent contract.

b) in case of holding of public offices or fulfilment of civic obligations, the employer may terminate the contract against payment of an indemnity provided for by the contractor collective agreement, after twelve months of suspension,

c) in case of force majeure, the interested party may terminate the contract without compensation after two months of suspension,

d) in case of the worker's imprisonment, the employer may terminate the contract without compensation after thee months of suspension or if the worker is later convicted to a criminal sentence of over two months.

CHAPTER VI
TERMINATION OF THE CONTRACT AND END-OF-SERVICE CERTIFICATE

Section 1
Termination of the contract

Art. 61.

Any contract of employment may be terminated at the initiative of the employer or the worker.

Art. 62.

A permanent contract may only be terminated at the employer's initiative on grounds relating to the ability or conduct of the worker on the workplaces during their duties or based on the operational needs of the company, establishment or service.

When the employer is considering redundancy for motives relating to the ability or conduct of the worker, they are liable, before making any decision, to allow the worker to defend themselves regarding the expressed reproaches or to explain themselves regarding the reasons put forward.

The following do not constitute valid reasons for termination:

- union membership, non-union membership or participation in union activities outside working hours or, with the employer's consent, during working hours,
- soliciting, exercising or having exercised a power of representation of workers,
- the filing of a complaint or participation in proceedings against an employer for alleged violations of laws, or recourse to competent administrative authorities,
- race, colour, gender, marital status, family responsibilities, pregnancy, childbirth and its aftermaths, religion, political opinion, national extraction or social origin, ethnic group,
- absence from work during maternity leave.

Any termination at the employer's initiative of a permanent contract, based on the operational needs of the company, establishment or service, shall be subject to conditions to be set by order of the minister in charge of labour and social welfare.

Art. 63.

Termination without a valid cause of a permanent contract entitles the worker to reinstatement. Failing this, the worker is entitled to damages set by the labour court calculated by taking into account, among others, nature of the services contracted for, time of service in the company, age and rights acquired under any capacity whatsoever.

However, the amount of these damages may not exceed 36 months of their last pay.

Breach of a permanent contract without notice or without the notice being fully observed gives rise to the obligation, for the responsible party, to pay the other party an indemnity of an amount equal to the remuneration and benefits of any kind which would have been received by the worker during the notice period which was not actually complied with.

Art. 64.

With the exception of longer period set by the parties or by collective agreement, the notice period of termination may not be less than fourteen working days from the day after the notification, when notice is given by the employer. This period shall increase by seven working days per full year of continuous services, counted from date to date.

The notice period of termination to be given by the worker is equal to half that which would have been given by the employer if he had taken the initiative to terminate. It may not exceed this limit in any case.

Failing a collective agreement, the duration and conditions of the notice shall be fixed by order of the minister in charge of labour and social welfare, after consulting the National labour council.

Art. 65.

During the notice period, the employer and the employee are required to comply with all their reciprocal obligations.

In order to search for another job, the worker will, during the notice period, be allowed a day off per week, taken at their choice, either as full or half days, and paid a full salary.

The party against which these obligations are not met may not be imposed any notice period, without prejudice to the damages it may deem fit to claim before the competent court.

Art. 66.

A worker who has been served the notice may stop work upon expiry of half the notice period which must be given to them by the employer.

The employer must pay remuneration and family allowances for the remaining time.

The amounts of commissions, bonuses, gratuities and dividends shall be taken into account in determining the remuneration and are calculated on the average of these items paid for the previous twelve months.

Art. 67.

A worker who has been served the notice and demonstrates having found a new job can leave his employer within a shorter time, set by mutual agreement, which may not exceed seven days from the day he has a new commitment. In this case, the worker loses the right to remuneration and family allowances in the notice period remaining.

Art. 68.

Except as provided in Article 60, the notice may not be notified during the period of leave nor during the suspension of the contract.

Art. 69.

The fixed-term contract expires upon expiry of the term fixed by the parties. The clause inserted into such a contract providing the right to terminate by notice is null and void.

Art. 70.

Any breach of permanent contract pronounced in violation of Article 69 gives rise to damages.

Where the employer causes the breach, these damages correspond to salary and benefits of any kind that the employee would have received during the period remaining until the end of the contract.

Art. 71.

In the event that the contract includes a probationary clause, either party may, for valid reasons pertaining to the capacity or conduct of the other, terminate the contract by giving a three working day notice, starting the day after the notification.

However, during the first three days of probation, the contract may be terminated without notice, full remuneration being due for any day started.

Art. 72.

Any contract of employment may be terminated immediately without notice, for serious misconduct.

A party is deemed to have committed gross negligence where the rules of good faith do not allow requiring that the other party continues performing the contract.

A party who intends to terminate the contract for gross negligence is required to notify in writing the other party of their decision within fifteen working days at the latest after having knowledge of the facts on which they rely.

For the purpose of inquiry, the employer has the right to notify the worker within two working days after becoming aware of the facts, of the suspension of the latter's duties.

The suspension from office, for the purpose of inquiry, is a precautionary measure that is distinct from the suspension of the employment contract under the Article.

The period of suspension shall not exceed fifteen days and a further period of fifteen days is given to the employer whose registered office is not the place of performance of contract.

The writing may be either sent by registered letter by post, or be given to the person interested against acknowledgment of receipt or, in case of refusal, in the presence of two literate witnesses.

The period of suspension from office for the purpose of inquiry shall be considered as working time.

Art. 73.

The employer shall commit a gross fault which allows the worker to terminate the contract where the former is in serious breach of contractual obligations, especially in the following cases:

- the employer or their agent is guilty towards the worker of an act of dishonesty, harassment, sexual or moral intimidation, assaults, serious injuries or where the former tolerates similar acts by other workers,
- the employer or their agent intentionally causes material injury during or due to the performance of the contract,

- during the performance of the contract, the safety or health of the worker is exposed to serious dangers that could not have been foreseen at the time of concluding the contract or where the worker's morality is at risk,
- the employer or their agent improperly reduces or withholds the worker's remuneration,
- the employer persists in not applying statutory or regulatory provisions in force regarding labour.

Art. 74.

The worker shall commit a gross fault which allows the employer to terminate the contract where the former is in serious breach of the contractual obligations and in particular if they:

- are guilty of an act of dishonesty , sexual or moral harassment, intimidation, assault or serious insults with regard to the employer or the employer's personnel,
- have intentionally caused the employer material damage during or due to the performance of the contract,
- are guilty of immoral acts during the execution of the contract,
- have compromised by their imprudence the security of the company or establishment, work or staff.

Art. 75.

If the contract is terminated pursuant to any of the provisions of Article 73 above, the employer shall be ordered to pay damages to the worker, which should be set according to the discretionary approach provided for in Article 63.

If the contract is terminated under any of the provisions of Article 74 hereinabove, the employer may claim compensation from the worker for damage directly caused by the gross negligence of the worker.

Art. 76.

Any termination of the contract must be notified in writing by the party which initiates it to the other party. If the termination is initiated by the employer, the notification letter must explicitly indicate the reason.

Art. 77.

The full and final settlement of all claims, issued to the worker upon the end of the contract, shall not imply any waiver of rights.

Art. 78.

With the exception of potential exemptions which shall be determined by order of the minister in charge of labour and social welfare, mass redundancies shall be prohibited.

The employer who contemplates dismissing one or several members of the personnel for economic factors, including the decrease in business of the establishment or internal restructuring, must respect the order of dismissals prepared while taking into account the professional skills, time of service in the establishment and the worker's dependents.

For the purpose of collecting suggestions, the employer must inform in writing, at least fifteen days in advance, workers' representatives in the company, of the measures the former intends to take.

Workers to be first dismissed shall be those with the least professional skills for the positions maintained and, in case of equal professional skills, the workers with shorter time of service,

which is increased by one year for the married worker and one year for each dependent child as laid down in Article 7 of this Code.

The worker thus dismissed shall retain for one year hiring priority in the same job category.

After this period, the worker shall continue to benefit from the same priority for a second year, however hiring may be subject to a professional probation or probationary internship, whose duration may not exceed that of the probationary period provided for in the collective agreement or where applicable, in the provisions of Article 43 of this Code.

The worker benefiting from hiring priority must disclose to the employer any change of address occurring after leaving the company. In the event of vacancy, the employer shall inform the interested party by registered letter with acknowledgment of receipt or by hand-delivered letter against acknowledgment of receipt, to the last known address of the worker. The worker must report to the company or establishment within fifteen days maximum after the date of receipt of the letter.

The labour inspector shall, prior to the implementation of redundancies, confirm their compliance with the prescribed procedure and the criteria set by the employer.

In the event of non-compliance with the procedure or the set criteria, the labour inspector shall notify the employer in writing. The latter must reply prior to proceeding to the redundancies.

Any redundancy occurred in violation of the provisions of this Code shall be deemed unfair.

Default of the labour inspector or the representatives of workers shall not preclude to the continuation of the procedure.

Section 2
End-of-service certificate

Art. 79.

Where the contract shall be terminated for any reason whatsoever, the employer must issue to the worker a certificate stating the nature and duration of the services provided, the start and the end date of benefits and registration number to the National institute of social security. No further indication may be added.

This certificate must be remitted within two working days from the end of the contract. It shall be exempt of stamp duty and registration.

CHAPTER VII
SUBSTITUTION AND
TRANSFER OF EMPLOYER

Art. 80.

Where there is substitution of an employer, including by transfer, succession, merger, conversion of funds, incorporation, all contracts of employment active on the date of substitution shall substitute between the new employer and the personnel.

Except in cases of force majeure, the ceasing of activities of the company or the establishment shall not exempt the employer of abiding by the rules on termination of contracts.

Bankruptcy and liquidation shall not be considered cases of force majeure.

Art. 81.

Any clause stating that the worker shall be required to transfer, during the contract, to the service of another employer shall be void.

This clause shall nevertheless be valid where it designates the employer or employers in whose service the worker may be transferred or where the transfer is intended for persons in whom the first employer were to transfer, in whole or in part, the business in which the worker carried out their services.

In the case of transfer, the new employer shall be subrogated to the previous employer.

CHAPTER VIII
SUB-CONTRACTING

Art. 82.

The sub-contractor shall be the natural or legal person who enters into a contract in writing or oral with a contractor to perform a specific work or providing certain services in exchange for a fixed price. They shall hire the necessary manpower themselves.

Art. 83.

Where the work shall be performed in a place other than workshops, stores or sites of the contractor, the latter shall, in case of insolvency of the sub-contractor, be responsible for the payment of the workers.

The injured worker shall, in such cases, have a right to a direct claim against the contractor.

Art. 84.

The sub-contractor must indicate their status, the name and address of the entrepreneur, by means of a notice posted on a permanent basis in each of the workshops, stores or sites used.

The contractor must maintain the list of sub-contractors with whom they have entered into a contract up to date.

Art. 85.

An order of the minister in charge of labour and social welfare, after consulting the National labour council, shall determine, where applicable, the implementing rules of this Title.

TITLE V
REMUNERATION

CHAPTER I
DETERMINING THE REMUNERATION

Art. 86.

On the basis of equal working conditions, professional skills and performance, remuneration shall be equal for all workers, regardless of their origin, gender and age.

Remuneration of a piece work must be calculated so that it provides the worker, of average capacity and average performance, a salary equal at least to that of the worker paid on the basis of time spent and carrying out a similar work.

No remuneration shall be payable in the event of absence, with the exception of the cases provided for by law or regulation and unless otherwise agreed by the interested parties.

Art. 87.

A decree of the President of the Republic, upon proposal of the minister in charge of labour and social welfare, after consulting the National labour council, shall set the guaranteed minimum inter-occupational wage as well as minimum family allowances and, in the absence of collective agreements on such matter, minimum wage per job class.

Art. 88.

Remuneration shall be set by individual contracts freely concluded by workers and employers or by collective agreements.

Any clause of individual contract or collective agreement shall be null and void where it sets remuneration under the guaranteed minimum inter-occupational wage set as pursuant to Article 87 of this Code.

Art. 89.

Remuneration must be stipulated in legal tender in the Democratic Republic of Congo.

Its amount shall be determined either by the hour or by the day, or by the week or month, or by the piece.

Art. 90.

The employer must apply a classification containing all non-executive, low-skilled jobs up to the collaborative executive jobs.

Collaborative executive job shall be understood as meaning that carried out by the worker without the authority to make autonomous decisions likely to significantly impact the running of the business.

Art. 91.

A single zone of guaranteed minimum inter-occupational wage shall be set in the Democratic Republic of Congo.

Without prejudice to the provisions of the preceding paragraph, a decree of the President of the Republic, upon proposition of the minister in charge of labour and social welfare, after consulting the National labour council, shall set, where applicable, specific provisions which may help reducing the difficulties faced by the agro-industrial and pastoral sectors.

Art. 92.

Upon lack of evidence of an agreed remuneration, the employer must pay the remuneration set by collective agreements or, where applicable, by the decree stated in Article 87 of this Code or by the practices of the place where the contract is to be performed, taking into account the nature of work, professional skills and worker's time of service.

Art. 93.

Remuneration shall be payable for the time in which the worker actually provided services; it shall also be payable where the worker was unable to work due to an action of the employer as well as for statutory public holidays, with the exception of a lock-out pursuant to statutory provisions.

The right to commissions on sales is acquired as soon as the contracts are carried out by the employer.

Art. 94.

The minima inter-occupational wages shall be set taking into account of a wage tension depending on a single wage scale, whose conditions and rules for determination and implementation shall be set by order of the minister in charge of labour and social welfare, after consulting the National labour council.

Art. 95.

The minimum inter-occupational wage of first job class shall be set according to the essential needs of the worker's family including the father, mother and dependent children whose number shall be set by the decree referred to in Article 96 hereunder.

The essential family needs and the elements taken into consideration to calculate this minimum inter-occupational wage of first category shall be determined after periodical inquiries in each province and in the city of Kinshasa under the conditions set by order of the minister in charge of labour and social welfare.

Art. 96.

A decree of the President of the Republic, upon proposal of the minister in charge of labour and social welfare, after consulting the National labour council, shall determine the rules for setting the guaranteed minimum inter-occupational wage, family allowances and the housing corresponding housing value.

Art. 97.

Inter-occupational minimum wages shall be adjusted according to the evolution of the index consumer prices.

The decree stated for in Article 96 hereinabove shall determine the rules.

CHAPTER II
MODE OF PAYMENT OF REMUNERATION

Art. 98.

Remuneration must be paid in cash, with any possible deduction of the corresponding value of benefits due and provided in kind.

Payment must be made during working hours, at the time and place agreed.

Payment of the remuneration may not occur in a beverage establishment or in a retail store, except for workers in these establishments.

An employer shall be prohibited to restrict in any way the workers' freedom to make use of their remuneration at their discretion.

Art. 99.

The payment of remuneration should be made at regular intervals not exceeding one month.

Payment shall be made no latter than six days after the period to which it corresponds.

Commissions obtained during a quarter may be paid within three months after the end of the quarter.

Participations in profits realised during a fiscal year must be paid within nine months after this fiscal year.

Art. 100.

Any outstanding amount pursuant to a contract of employment, upon definitive ceasing of effective services, must be paid to the worker, and, where applicable, to the latter's beneficiaries, at the latest within two working days after the date of ceasing of services.

Art. 101.

Subject to the provisions of Articles 138 and 139 of this Code, payment of all or part of the remuneration in kind shall be prohibited.

Art. 102.

The employer shall validly remit to the minor remuneration of the latter's work. However, the person who exerts on the minor the parental authority or guardianship may object to the remuneration's remission to the minor.

The competent court may waive this objection where circumstances or fairness so warrant.

Art. 103.

The employer must provide the worker, at the time of payment and according to the conditions set by order of the minister in charge of labour and social welfare, with a written breakdown of the remuneration paid.

Failure by the employer to fulfil this obligation, any claims pertaining to the breakdown of payments made shall be rejected unless they can prove that it was not possible to provide the breakdown due to an action of the worker or where there is written evidence, prima facie evidence in writing or confession of the worker.

Art. 104.

Full acceptance, by the worker, of a paid remuneration breakdown, the worker's signature as well as the mention "as a full and final settlement" on the remuneration breakdown, or any similar mention signed by the worker, may not amount to a waiver of all or part of the worker's statutory, regulatory or contractual rights.

It may not amount either to settling the balance within the meaning of Article 317 of this Code.

CHAPTER III
PAYMENT IN CASE OF ILLNESS OR ACCIDENT

Art. 105.

Where workers are unable to provide their services due to illness or accident, they retain the right, throughout the contract's suspension, to two thirds of remuneration in cash and to family allowances in full.

The right to contractual benefits in kind shall continue during the work incapacity, unless the worker requests their corresponding value in cash. However, housing may not be replaced by its corresponding value.

Calculation of remuneration during this time period shall be done under the conditions set in Article 66.

Art. 106.

Where an illness or accident is deemed occupational disease or accident pursuant to social security regulation, the worker shall retain the right for the first six months of the suspension of the contract to two thirds of the remuneration in cash and to the allowances in full.

The employer shall be entitled to deduct on monthly basis the amounts paid to the worker by the National institute of social security, by producing supporting document which need to be accepted after verification by this Institute.

During the same period, the right to benefits in kind shall remain unless the worker requests the corresponding value in cash.

Housing may not however be replaced by its corresponding value.

Art. 107.

No sum or benefit is payable where it is established that the illness or accident or aggravation of illness or previous accident results from a specific risk to which the worker was voluntarily exposed aware of the danger, or where the worker without valid reason, fails to use available medical or rehabilitation services, or fails to comply with the rules prescribed for the verification of the damage or for the conduct of the beneficiaries of allowances.

Art. 108.

A special risk, within the meaning of Article 107, shall occur where the illness or accident or aggravation of illness of previous accident results from:

1) an illness or accident caused by an offence committed by the worker which resulted in a final conviction,
2) an accident occurred during the practice of a dangerous sport, a violent exercise carried out during or for a competition or show, except where these are organised by the employer,
3) an illness or accident due to excessive drinking or drug consumption,
4) an illness or accident caused intentionally by the interested party,
5) an illness or accident caused by works carried out on behalf of a third party,
6) acts of war, unrest or riots, except where the illness or accident, as pursuant to the definition provided by the social security regulation, occurs due to or during work.

CHAPTER IV
PRIVILEGES AND GUARANTEES OF THE WAGE CLAIM

Art. 109.

Amounts payable to employers may not be subject to garnishment or levy to the prejudice of workers to whom remuneration is payable.

Art. 110.

In case of bankruptcy or liquidation of a company or establishment, the workers shall be considered privileged creditors, over all other creditors including the Treasury, notwithstanding any contrary provisions in previous legislation for wages they are owed for services provided prior to the bankruptcy or liquidation.

This privilege shall concern both movable and immovable property of the employer.

Remuneration must be paid in full before other creditors may claim their share, as soon as the required funds are gathered.

CHAPTER V
WAGE DEDUCTIONS AND REDUCTIONS

Art. 111.

Any provision granting the employer the right to impose fines shall be void.

Art. 112.

Shall be null and void any provision granting the employer the right to impose wage reductions for damages.

However, the following deductions are allowed:

a) tax deductions: business tax,
b) contribution due to the Social security national institute,
c) deductions for advances,
d) deductions for compensation in the event of workers' violation of the obligation they are placed under pursuant to Article 52,
e) deductions for the purpose of guaranteeing the performance by the worker of the obligation provided for in Article 52.
Deductions made pursuant to this subparagraph e) shall be, with mention of their assignment, deposited on behalf of the worker and bear interest to the latter's profit. The deposit is made within one month period from the deduction date, in a bank or an institution granted approval by order of the minister in charge of labour and social welfare.
The employer must disclose to the worker the account number and the name of the institution where the deposit was made.
With the deposit, the employer obtains a privilege on the guarantee for any debt resulting from the total or partial non-performance of the worker's obligation provided for in Article 52.
In case there is no guarantee, the deductions referred to in subparagraph d) of this Article may only be made within the limits stated in Article 114 hereunder,
f) deductions for loan,
g) garnishment.

Art. 113.

The guarantee's amount may only be returned to the worker or paid to the employer on the basis of their mutual agreement or the production of an extract of a ruling with the force of res judicata or enforceable even where challenged or appealed against.

The employer must agree to the release of the guarantee within thirty days after the end of contract, unless, prior to this period's expiry, a claim to exercise a privilege on said guarantee has been brought before court. However, the competent court's presiding judge may, at the justified request of the employer, allow maintaining the guarantee after this period, determining the amount up to which it is maintained.

This authorisation shall only take effect on the condition to be supported by an action brought before court within the set time limit by the ordinance granting it.

CHAPTER VI
ATTACHMENTS AND TRANSFERS

Art. 114.

The worker's remuneration shall only be transferable and attachable up to one fifth on the portion not exceeding five times the minimum inter-occupational monthly wage of the worker's category and one third on the excess.

It shall be transferable and attachable up to two fifths where the debt is based on a legal maintenance obligation.

The attachment and transfer authorised for each debt and those authorised due to a legal maintenance obligation may operate cumulatively.

Calculation of the attachable or transferable portion shall be done after tax and social deductions and housing appraisal, as defined in Article 139 of this Code.

CHAPITRE VII
EMPLOYEE STORES

Art. 115.

Shall be considered an employee store, any organization where the employer carries out, directly or indirectly, the sale or transfer of food and essential commodities, to workers exclusively, for their personal and normal needs.

Art. 116.

Employee stores shall be accepted under the following three conditions, including that:

a) workers are not obliged to purchase anything from the store,
b) the sale of goods is done at reasonable prices, established by the employer, after consulting the trade union delegation, according to the interests of workers and excluding any kind of profit-making purpose,
c) the store's accountability is fully autonomous.

Art. 117.

Prices of food and goods for sale must be clearly displayed and communicated to the local labour inspector.

Sale and consumption of alcohol, spirits, tobacco and any kind of drug shall be prohibited in employee stores as well as workplaces of workers.

Art. 118.

Opening an employee store shall be subject to the approval of the minister in charge of labour and social welfare or their local representative, after consulting the local labour inspector.

This opening may be prescribed in any company by the minister in charge of labour and social welfare or their local representative, based on proposition of the local labour inspector.

Where abuse is observed, the minister in charge of labour and social welfare or their local representative may, under the same conditions, order the temporary or definitive closure of the employee store.

TITLE VI
GENERAL WORKING CONDITIONS

CHAPTER I
WORKING TIME

Art. 119.

In any public or private, even educational or charitable establishment, the legal working time of employees or workers of either gender, regardless of how work is carried out, may not exceed forty-five hours per week and eight hours per day.

It must be calculated from the moment where the worker is on the premises of the workplace available to the employer, until the moment where services stop being provided, according to the working hours decided by the employer and inserted in the company regulation.

It shall not include the time needed for the worker to go to the workplace or to come back from it, except where this time is inherent to work.

Hours done beyond the legal working time shall be considered as supplementary hours and entitle to a wages increase.

Art. 120.

Orders of the minister in charge of labour and social welfare, after consulting the National labour council, shall determine per economic activity category and per job class, where applicable:

a) implementation rules of the preceding Article,
b) number of supplementary hours which may be authorised beyond the legal working time,
c) temporary or permanent exemptions for certain classes of workers and rules pertaining to these exemptions,
d) reductions of the maxima limits set in Article 119 hereinabove,
e) rules for the remuneration of supplementary hours.

CHAPTER II
WEEKLY REST AND
STATUTORY PUBLIC HOLIDAYS

Art. 121.

Any worker must dispose, for each seven day period, of a rest totalling at least 24 hours .

This rest must be granted as often as possible, at the same time to all personnel. It is granted on Sunday. However, the collective agreements can prescribe the specific favourable conditions.

The minister in charge of employment, labour and social welfare shall determine by order, after consulting the National labour council, the implementation rules of the preceding paragraphs, including the professions for which and the conditions under which rest may, exceptionally and for clearly justified reasons, either be granted on a rotational basis or collectively another day than Sunday.

Art. 122.

Where weekly rest shall be granted collectively to all the personnel, the employer must display in advance, in places reserved for personnel communication, days and hours of collective rest.

Where rest is not collectively granted to all the personnel, the employer must notify in advance, in places to this effect, names of workers under specific regime and the indication of such regime.

Art. 123.

The President of the Republic shall determine, by decree, on proposition of the minister in charge of labour and social welfare, after consulting the National labour council, the list of statutory public holidays.

The minister in charge of labour and social welfare shall determine by order taken after consulting the National labour council, the regime of statutory public holidays.

CHAPTER III
NIGHT WORK

Art. 124.

Night work shall be work carried out between 7 pm and 5 am.

It must be paid with an increase, without prejudice to the provisions on payment of supplementary hours.

The implementation rules of this Article shall be determined by order of the minister in charge of labour and social welfare, after consulting the National labour council.

Art. 125.

Children and disabled persons may not work at night in public or private industrial establishments.

The term night referred to in the preceding paragraph means the period from 6 pm to 6 am.

Art. 126.

Daily rest of children and disabled persons between two work periods must last twelve consecutive hours at least.

Art. 127.

Exemptions which may be granted to provisions of Articles 125 and 126 hereinabove, taking into account of the exceptional circumstances, the particular nature of the profession, or for the apprenticeship or training needs and vocational development, shall be set by the decrees states in Article s38 and 128 of this code, on the working conditions of children and disabled persons.

Exemptions stated in the previous paragraph shall not apply to companies where family members only are employed.

CHAPTER IV
WORK OF WOMEN, CHILDREN AND DISABLED PERSONS

Art. 128.

Orders of the minister in charge of labour and social welfare, after consulting the National labour council, shall set the working conditions of women, children and disabled persons and determine especially the nature of any work which is prohibited for them.

Pregnancy may not constitute a cause for discrimination in terms of employment. It is especially prohibited to require of a woman applying for a position the taking of a pregnancy test or the evidence of a certificate confirming or infirming the pregnancy, except for works which are completely or partly forbidden to pregnant women or who breast-feed or which include a known or significant risk for the woman's and child's health.

Art. 129.

Any pregnant woman whose state, duly confirmed by a doctor, could cause risks to her health, has the right —based on the medical certificate— to suspend their contract of employment in accordance with article 57 of this Code, without this interruption of service being considered as grands for termination of the contract. The pregnant women may, under the same terms, terminate their employment contract without prior notice and thus without having to pay compensation for breach of contract.

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Art. 130.

Upon giving birth, and without this work interruption being considered as a cause for terminating the contract, any woman has the right to suspend her work for fourteen consecutive weeks, of which eight weeks maximum after childbirth and six prior to giving birth.

During this period, whether the child lives or not, the salaried woman is entitled to two thirds of her remuneration as well as the maintaining of contractual benefits in kind.

During this period, the employer may not terminate the contract of employment,

Any salaried woman benefits from the provisions of Article 130 of this Code, provided that the provisions are applicable, whether she is married or not, whether the child lives or not.

Art. 131.

Any agreement contrary to the provisions of Articles 129 and 130 hereinabove shall be ipso jure null and void.

Art. 132.

Where the woman breast-feeds her child, she is entitled under any circumstances to two breaks of half an hour per day to allow breast-feeding. These break periods shall be remunerated as working time.

Art. 133.

Children may not be employed in a company even as apprentices, before the age of 15 except with the explicit exemption from the local labour inspector and the parental authority or guardian.

Under no circumstances the explicit exemption from the local labour inspector and the parental authority or guardian may be granted under 15 years old.

Art. 134.

Any person whose prospects of finding and keeping a respectable employment as well as professionally developing are significantly reduced owing to a duly recognised physical or mental handicap shall be considered a disabled worker.

Art. 135.

A handicap may not prevent a person from acceding to a position which corresponds to their intellectual, sensorial or physical abilities in the public, semi-public or private sector, provided that their handicap would not cause a prejudice or hamper the operating of the company.

Art. 136.

Disabled persons are entitled to benefit, under the same conditions as the other workers, of a vocational training.

Art. 137.

The labour inspector may request a medical examination of the children, women and disabled persons by a physician to verify whether their work does not exceed their strength. This request shall be at the request of any interested party.

The child, woman or disabled person may not be maintained in a position thus recognised as beyond their strength and must be affected to a reasonable work. If it is impossible, the contract must be terminated at the employer's initiative with payment of the notice indemnity.

CHAPTER V
HOUSING
AND FOOD RATIONS

Art. 138.

In case of transfer or commitment outside the place of employment, the employer must provide the worker and their family with decent housing, or failing this, substantial compensation.

In other cases, the employer must pay the worker housing allowance set by the parties, either in the contract of employment, or in the collective agreements, or in the company regulation.

Female workers are entitled to being provided with housing or paid housing allowance.

In the case where the worker may not, on its own, obtain for themselves and their family regular supplies of food staples, the employer shall be required to ensure it for them.

Art. 139.

An order of the minister in charge of labour and social welfare, after opinion of the National labour council, shall determine:

a) cases in which housing shall be provided, its maximal redemption value and the conditions which need to be met, notably with regard to hygiene and to provide protection to women and young girls who do not live within their families,

b) regions and classes of workers for which shall be compulsory the supply of a daily food ration, its maximum redemption value, the breakdown in kind and weight of the food staples composing it and the conditions of its supply.

CHAPTER VI
LEAVES

Art. 140.

The employer must give the worker an annual leave.

Workers may not renounce to this leave.

Entitlement to a leave shall arise at the expiry of a year of service calculated from date to date and completed with the same employer or a substitute employer.

The date of the leave shall be set upon mutual agreement, without its effective start exceeding of six months however, the date set for its taking.

Workers may only cumulate half of their leave during a period of two years.

During the leave period, workers and their family have a right to healthcare. In case of a leave outside the Democratic Republic of Congo or the workplace, the employer, after opinion of the medical advisor, shall fully or partially reimburse the costs regarding any care received by the worker.

Art. 141.

The leave period shall be at least one working day per full month of service for the worker aged over eighteen years old. It shall be at least one working day and a half per full month of services for the worker aged less than eighteen years old. It shall increase of one working day per period of five years of seniority with the same employer or substituted employer.

Services taken into account to calculate the leave period include the days of work services, weekly rest, paid leave and statutory bank holidays, as well as suspension periods due to work incapacity up to a maximum of six months per year of service considered separately, without this limit applying to the incapacity resulting from work accident or occupational disease.

Travel time shall not be included in the leave.

Sick days included during the leave period shall not count as leave days.

Art. 142.

Throughout this leave period, the worker shall be entitled to an allowance equal to the remuneration which is paid out at the time of the leave's start date, benefits which can be remitted in kind during the effective services as pursuant to contractual provisions, being at the worker's request, paid in cash on the legal basis, with the sole exception of the housing.

The possible amounts of commissions, bonuses, amounts paid out for additional services and participation to profit-sharing shall be taken into account to determine the leave allowance, and shall be calculated on the average of benefits paid for twelve months preceding the leave.

Family benefits shall be payable throughout the leave period.

Art. 143.

The worker shall not engage in a remunerated activity throughout the leave period.

Art. 144.

In case of termination of the contract, whenever it occurs, the leave shall be replaced by a compensatory indemnity calculated in accordance to Article 142 hereinabove.

Apart from this case, shall be null and void any agreement providing for a compensatory indemnity in lieu of leave.

Art. 145.

Payment of leave allowance shall be done at the time of the effective leave's start date and at the latest, on the last working day prior to the leave.

Payment of the compensatory indemnity must be done within two working days after the end of the contract.

Art. 146.

The worker shall be entitled to the following circumstantial leave:

1) marriage of the worker: 2 working days,
2) childbirth of the wife: 2 working days,
3) death of the spouse, or close parent to the first degree: 4 working days,
4) marriage of a child: 1 working day,
5) death of a close parent to the second degree: 2 working days,

These days shall not be deducted from the statutory minimum leave period.

Circumstantial leave may not be fractioned.

Health care shall be payable during circumstantial leave.

The employer shall only be required to pay circumstantial leave up until fifteen working days per year only.

CHAPTER VII
TRAVEL AND TRANSPORTATION

Art. 147.

The outbound journey shall be the travel, during the commitment, renewal of commitment or when starting a period of services, of the distance between the place of acceptance of the commitment or promise of commitment and the place where the work must be carried out.

The inbound journey shall be the travel, upon expiry of the contract or a period of services, of the distance between the place where the work must be carried out and the place of acceptance of the commitment or promise of commitment.

These journeys shall be made at the date, under the conditions and according to the routes, times and means contractually determined subject to the provisions of this Chapter.

Art. 148.

The employer shall pay for the expenses of the outbound journey of the worker and their family. However, this obligation only arises, toward the family, after the probation period. In addition, where a suspension of contract occurs prior to the journey, it leads to the suspension of said obligation.

The employer shall not be required to pay for travel expenses of persons in respect of whom the worker made fraudulent declarations. Where employers have paid undue expenses, they may compensate by deducting from the wages, in accordance with the provisions of Article 114 of this Code.

Art. 149.

Generally, the workers' and their family's right to the inbound journey shall arise, without restriction, after each period of two years of service, calculated from date to date.

Shall also be entitled:

a) the worker, during the probation period, even where the contract is terminated because of the worker's gross negligence,
b) the worker and their family, prior to the expiry of the second year of services, where the contract ends because of the employer's action,
c) the worker and their family, upon expiry of any contract concluded for a period less than two years,
d) the worker's family, where the latter dies before the end of the contract.

The employer shall only be required to pay for the inbound journey in proportion to the duration of services completed:

1) where the contract has been terminated because of the worker's gross negligence,
2) where the worker has terminated the permanent contract after twelve months of services since the last outbound journey and without gross negligence of the employer,
3) where the parties terminate the contract on mutual agreement after twelve months of services.

The employer shall only bear the expenses of the inbound journey where this journey is actually made.

Art. 150.

The limit age of children shall not be taken into account, where they reach it during the period of services.

Art. 151.

The right to the inbound journey shall expire:

a) where the worker explicitly waives it and in writing, after expiry of the contract,
b) where the worker has not requested for its enforcement within two years after the start date of this right or from the day on which the contract ends.

The employer shall be required, in order not to be obliged to pay for the inbound journey expenses, to have the local labour inspector state:

1) in the case stated in subparagraph a) of this Article, that the worker's waiver is real and that the latter has been authorised to remain on the workplace or near this place, at the worker's request or with their agreement,
2) in the case stated in subparagraph b), that the worker willingly abstained from claiming under the right to inbound journey.

Art. 152.

The employer shall ensure the inbound journey as soon as possible from the end of services.

In addition, the employer must pay to the worker an indemnity equal to the monthly remuneration until the time of the actual departure unless it is delayed:

1) by the worker's negligence,
2) by the worker's refusal to comply with the employer's directives,
3) by force majeure.

Where employers fail to fulfil their obligations regarding the inbound journey, the local labour inspector shall require that they fulfil them within a six day period. After this period, the aforementioned authority, acting in lieu of the worker, shall automatically refer to the labour court without prejudice to the sanctions provided for in Title XV of this Code.

Art. 153.

In any contract concluded for one year maximum with a worker living abroad, the employer may at any time of the commitment, indicate that they do not bear the outbound and inbound travel expenses of the family.

Art. 154.

During the journey's duration, but only within the required limit to make said journey, under the conditions laid down in Article 155, paragraph 1 hereinafter, the worker shall be entitled, at

the employer's expenses, to an indemnity equal to the remuneration received had the worker continued to work.

Art. 155.

Travels and transportation shall be made through normal means left at the employer's choice.

Workers who use a route or means of transportation more expensive than those chosen by the employer shall only be reimbursed up to the expenses occurred by the route or means regularly chosen by the employer, except in case of medical prescription to the contrary.

Where they take a route or use means of transportation less expensive, they may only be entitled to reimbursement of expenses actually paid.

Workers who take a route or use means of transportation slower than those regularly chosen by the employer may not be entitled to travel times longer than those planned through the normal route and means.

Art. 156.

The travel class and luggage weight shall be determined by considering the worker's situation in the company according to the collective agreement's provisions or, where applicable, according to the rules set by order of the minister in charge of labour and social welfare, after opinion of the National labour council.

Family dependents shall be taken into account to calculate the luggage weight, in any case.

CHAPTER VIII
COMPANY REGULATION

Art. 157.

Company regulation shall be prepared by the employer in any public or private establishment, even of teaching or charity nature.

Its content shall specifically concern rules pertaining to the technical organisation of work, discipline, to provisions regarding hygiene and safety required to the smooth operating of the company, establishment or service and to remuneration payment's conditions.

All other clauses which would eventually be included, especially those providing fines against workers, shall be deemed ipso jure null and void.

Prior to its entry into force, the company's or establishment's chief executive officer must communicate the company or establishment regulation for opinion of workers' representatives, as defined in Title XII of this Code, and to the labour inspector who may require the withdrawal or modification of provisions contrary to the legislation and regulation in force.

Art. 158.

The content, communication, filing and display rules of the company regulation shall be set by order of the minister in charge of labour and social welfare, after opinion of the National labour council.

TITLE VII
HEALTH
AND SAFETY AT WORK

CHAPTER I
OBJECTIVES

Art. 159.

Health and safety conditions at work shall be ensured in order to:

1) prevent work-related accidents,
2) fight against occupational diseases,
3) create healthy working conditions,
4) remedy to excessive professional exhaustion,
5) adapt work to the man
6) manage and fight against community's major endemic diseases while at work.

CHAPTER II
HEALTH AT WORK

Art. 160.

Companies or establishments of all kinds must ensure the assistance of health services at work.

Art. 161.

Health services at work shall be provided by a medical physician.

They have a preventive role mainly and their mission is to ensure:

- the medical supervision of workers and health supervision of workplaces,
- immediate relief and emergency first-aid to victims of accident or illness.

Art. 162.

An order of the minister in charge of labour and social welfare, after opinion of the National labour council, shall determine and set the implementing rules of this Chapter.

CHAPTER III
SAFETY AT WORK

Art. 163.

Any company or establishment must organise a special safety, hygiene and improvement of the workplace service.

Art. 164.

The mission of the special safety, hygiene and improvement of the workplace service shall be to provide:

- technical supervision of workers and health supervision of workplaces,
- animation and general training of workers.

Art. 165.

The special safety, hygiene and improvement of the workplace service shall be provided by an officer holding the title of head of the safety, hygiene and improvement of the workplace service.

Art. 166.

An order of the minister in charge of labour and social welfare, after opinion of the National labour council, shall determine and set the implementing rules of this Chapter.

CHAPTER IV
COMMITTEE OF SAFETY, HYGIENE AND IMPROVEMENT OF THE WORKPLACE

Art. 167.

Any kind whatsoever of company or establishment employing workers must form a committee of safety, hygiene and improvement of the workplace.

Art. 168.

The mission of this committee of safety, hygiene and improvement of the workplace is to:

- conceive, correct and implement the prevention policy of work-related accident and occupational diseases,
- stimulate and monitor the smooth operating of safety and health services at work.

Art. 169.

An order of the minister in charge of labour and social welfare, after opinion of the National labour council shall determine the composition, forum and operating rules of committees of safety, hygiene and improvement of the workplace.

CHAPTER V
FIGHT AGAINST NUISANCES

Art. 170.

Any company or establishment must be kept in a continuously clean state and provide hygiene and safety conditions required for the personnel's health.

Art. 171.

Hygiene and safety conditions on workplaces shall be set by orders of the minister in charge of labour and social welfare.

These orders shall specify in which cases and under which conditions the local labour inspector shall use the procedure of formal notice and the conditions for appeal.

Art. 172.

The formal notice shall be served by the local labour inspector either written on site, or by registered letter with acknowledgment of receipt.

It shall be dated and signed. It shall specify breaches or dangers observed and set the time limits within which they must be remedied to. These time limits may not be under four days except in case of emergency.

Art. 173.

It shall be prohibited to proceed to the sale, rent, exhibition or transfer of machines whose dangerous parts are not adequately protected.

An order of the minister in charge of labour and social welfare, after opinion of the National labour council shall set the implementing rules of this Article.

Art. 174.

Visits, receptions, examinations, re-examinations, checks and assessments carried out by the agencies provided for, with regards to the enforcement of statutory and regulatory provisions on hygiene and safety at work, as well as verifications of electrical installations in companies and establishments that provide electrical current must be mandatorily performed by persons or agencies licensed by the minister in charge of labour and social welfare.

Where these persons or agencies belong to a public service or service under State control, an appointment order shall be taken on proposition of the minister responsible for the appointed technician or agency.

Any breach to the provisions of the orders referred to in Article 171 shall be immediately recorded in an official report.

Where the facts reported constitute a serious and imminent danger to the safety or health of workers, the local labour inspector may exceptionally, order or have ordered that the concerned machine or work be stopped.

Art. 175.

Where there are dangerous working conditions for the workers' safety or health, and not referred to by the orders stated in Article 171 hereinabove, the employer shall be served a notice by the labour inspector, so they can be remedied to in the forms and under the conditions stated in the preceding Article.

However, in such case, the employer may, prior expiry of the notice's time limit, address a complaint as registered or hand-delivered letter with acknowledgement of receipt to the minister in charge of labour and social welfare. This complaint shall be suspensive.

The minister's decision shall be notified to the employer, by administrative means, through the local labour inspector as intermediary within one month from receipt of the complaint.

The minister's silence shall be deemed approving the complaint.

Art. 176.

The employer shall be required to inform the Social security national institute as well as the local labour inspection under the conditions and in the terms and time limits provided for by the legislation and regulation on social security, work accidents or occupational diseases duly reported.

TITLE VIII
CORPORATE MEDICAL SERVICE

Art. 177.

Any company or establishment must provide medical service to its workers.

Orders of the minister in charge of labour and social welfare, after opinion of the National labour council, shall determine the implementing rules of this obligation.

These orders shall set among others:

a) the number, qualifications and duties of medical staff to employ, given the local conditions and the number of workers employed in the company or establishment,
b) conditions in which employers may ensure that their medical service is provided, either through medical training external to the company or establishment, or through internal training, or through a service common to several companies,
c) conditions under which the employers must install and supply the infirmary or hospital offices or first-aid kit.

Art. 178.

In case of illness, accident, pregnancy or childbirth, and even in case of suspension of the contract for force majeure, the employer shall be required to provide the worker and their family, until the contract's end:

1) medical, dental, surgery care, pharmaceutical and hospitalisation costs,
2) travel expenses required, where the worker or their family is physically unable to move,
3) glasses, orthopaedic and prosthesis devices, dental prosthesis excepted, on medical prescription and rates set by the minister in charge of public health.

Where, as a result of the contract or the law, the worker must be repatriated at the expense of the employer, the obligation of care shall not cease prior to the day on which the worker's state of health allows for the worker's return. This return shall be decided by the employer on the basis of the physician's opinion. In case of challenge, the worker may appeal before a medical committee whose composition shall be set by the provincial governor, according to the forms and conditions determined by order of the minister in charge of labour and social welfare, after opinion of the National labour council.

The employer who, except in case of the worker's gross negligence, ended the permanent contract exempting the worker from performing his duties during the notice period, shall be required to provide the latter with health care until the date on which the contract would have normally ended, had the notice period been respected.

The employer shall however be relieved from such obligation from the moment the worker is hired by another employer, or has engaged in significant gainful activity.

Art. 179.

Where the illness or accident are deemed occupational disease or work accident within the meaning of the Social security regulation, the employer's obligations stated in Article 178 shall be limited to the period not covered by the benefits of the Social security national institute.

Art. 180.

Care shall not be born by the employer:

1) where the illness or accident or aggravation of illness or previous accident results from a specific risk, according to Article 107 of this Code,
2) where the beneficiary evades without legitimate reason, either medical care, even preventive, or preventive hygiene rules, or a medical control proposed by the employer,

3) in case of false declaration or concealment by the concerned parties.

Art. 181.

The employer must take all actions required to provide the care stated in this Title, under the conditions determined by the orders referred to in Article 177 of this Code.

Art. 182.

In case of accident or disease for which a third party may be liable, any action brought against the third party shall not prevent the employer to perform their obligations.

Art. 183.

The reimbursement rate of expenses paid by the worker and their family for healthcare abroad shall be set by order of the minister in charge of labour and social welfare, after opinion of the minister in charge of public health.

Art. 184.

The worker's family members shall only benefit from the provisions of this Chapter where they are dependent on the worker, actually live with the worker and are not engaged in gainful activity.

Shall be considered as actually living with the worker:

- children attending an education establishment located in Democratic Republic of Congo,
- family members where the separation is due to the work's nature, force majeure, an act of the employer or customs.

TITLE IX
LABOUR ADMINISTRATION

CHAPTER I
GENERAL PROVISIONS

Art. 185.

Labour administration shall, under the responsibility of the minister in charge of labour and social welfare, play a designing and advisory, coordinating and supervisory role, in labour, employment, training and social welfare.

Its mission shall include:

1) to prepare a draft for all projects of legislative or regulatory texts pertaining to workers' condition, professional relations, workers' employment and placement, vocational training and development and social welfare,
2) to advise, coordinate and supervise services or bodies
3) to gather and keep up-to-date statistic information regarding employment and working conditions and operations of social welfare,
4) to continue relations with other States and international organisations with regard to issues on labour, employment, social promoting and welfare,
5) to ensure the implementation of legislation and regulation on the matters listed in paragraph 1 of this Article,
6) to offer advice and recommendations to employers and workers,
7) to realise, in collaboration with concerned authorities and bodies, the most efficient organisation of the employment market possible as part of the national program to ensure and maintain full employment as well as develop and fully use productive resources,
8) to make any employer, natural or legal person, under public or private law, of Congolese or foreign nationality, comply with the strict prohibition to employ more than 15% of foreigners in their personnel.

Art. 186.

Labour administration shall consist of:

- central services, under responsibility of the minister in charge of labour and social welfare,
- provincial and local services.

The organisation and operating of central services and provincial and local services shall be determined by a decree of the President of the Republic, on proposition of the minister in charge of labour and social welfare.

CHAPTER II
LABOUR INSPECTION

Art. 187.

The mission of labour inspection shall be:

1) to ensure the implementation of statutory provisions regarding working conditions and workers' protection in the exercise of their duties, such as the provisions regarding working hours, wages, safety, hygiene and welfare, employment of women, children and disabled persons, collective and individual labour disputes, the application of collective agreements, the representation of personnel and other related issues,

2) provide information and technical advice to employers and workers on the most efficient means to abide by the law,
3) advise on issues relating to the establishment or modification of company or body facilities subject to administration authorisation,
4) bring to the competent authority's attention any defect or abuse revealed by the implementation of legal provisions and which are not covered by them.

Art. 188.

The carrying out of labour inspection's missions shall only be within the general labour inspectorate's jurisdiction.

The general labour inspectorate includes:

a) the general labour inspectorate department in the central service,
b) provincial and local inspections.

Art. 189.

The general labour inspectorate department shall manage, coordinate and monitor all activities required by the exercise of labour inspection's missions.

It shall submit to the minister all propositions pertaining to the personnel of the General Labour Inspectorate.

Art. 190.

A Decree by the Prime Minister that has been deliberated by the council of Ministers lays down the organisation and the functioning of the General Labour Inspectorate.

Art. 191.

The jurisdiction of the labour inspector attached to the General Labour Inspectorate shall extend to the whole national territory.

The jurisdiction of the labour inspector attached to a province or the city of Kinshasa shall be limited to the administrative jurisdiction of attachment.

Art. 192.

Without prejudice to the recognised skills of the local labour inspector, the labour inspector attached to the General Labour Inspectorate shall be qualified to:

a) know of any labour dispute regarding the exercise of their mission as defined in Article 187, including:
- individual labour disputes for which one of the parties found themselves materially incapable of commencing or pursuing until the end the conciliation procedure before the local labour inspector,
- collective labour disputes impacting several establishments of the same company or impacting several companies of one or several sectors of activity covered by more than one jurisdiction of the labour inspection,

b) carry out special inspection visits with regard to technical safety, health at work, workforce, social welfare institution, i.e. mutual associations and insurance companies, negotiation of national collective agreements and contradictory inquiry.

This provision shall apply, mutatis mutandis, to inspectors attached to labour inspections of provinces, districts or territories within the limits of their respective jurisdictions,

Art. 193.

The minister in charge of labour and social welfare shall set by order, after opinion of the National labour council, the name, headquarter, forum and territorial jurisdiction of the labour inspection services.

Art. 194.

Prior to the start of their functions, labour inspectors and controllers shall take the following oath: "I swear, before God and the Nation, loyalty and obedience to the Constitution and the laws of the Democratic Republic of Congo, to loyally fulfil my duties and not to reveal, even after leaving the service, trade or business secrets or business processes which I could learn of while performing my duties".

This oath is taken in writing before the Court of Appeal, and a copy shall be filed in the officer's administrative file.

Art. 195.

To ensure the carrying out of inspection missions requiring specific technical skills, the labour inspector may request the assistance of experts and technicians or public or private bodies having been approved by the minister in charge of labour and social welfare.

This technical assistance shall be provided under the labour inspection's supervision.

Costs resulting from this assistance shall be borne by the Ministry in charge of Labour and Social Welfare.

Art. 196.

Labour inspectors and controllers, with supporting documents of their function, shall be authorised to:

a) freely go inside, without prior warning, at anytime of the day and night, any establishment under the inspection's supervision,
b) go inside any office thought to be under the inspection's supervision during the day,
c) proceed to any assessment, control or inquiry deemed necessary to ensure the effective compliance with statutory provisions, including:
    1. interrogate, either alone or with witnesses present, the employer or personnel of the company or establishment on all issues regarding the implementation of statutory provisions,
    2. request that they be provided with, either onsite or in their office, all the books, records and documents for which the keeping is prescribed by law in order to verify its compliance with statutory provision and have a copy made or excerpts prepared,
    3. require the display of opinions as pursuant to statutory provisions,
    4. proceed to the taking and removal of samples of raw materials and substances used or manipulated for testing, provided that the employer or their representative is notified that materials and substances were taken and removed for such purpose.

Upon an inspection visit, the labour inspector or controller shall inform the employer or their representative of their presence, unless they consider that such information would prejudice the supervision's effectiveness.

Art. 197.

While performing their duties, labour inspectors and controllers shall be empowered to:

a) request where necessary to the cooperation and assistance of any public body for the purpose of completing their mission,
b) request that the employer provides them with information and statistics regarding workers or their working conditions,

c) notify the breach of statutory provisions by official reports, deemed true until proved otherwise, that they submit to the competent hierarchal authority,

d) provide observations and advice both to the employer or their representative and the workers,

e) serve the employer or their representative notice to ensure compliance with statutory provisions,

f) order or have ordered that measures immediately enforceable be taken where they have reasonable grounds to think that there is serious and imminent threat for the health or safety of workers.

Pursuant to the provisions of subparagraph f), copy of the official report shall be sent to the employer or their representative and to the competent hierarchal authority within eight days maximum from the observation of the breach.

The employer or their representative may challenge this decision by addressing within fifteen working days from receipt, by registered or hand-delivered letter with acknowledgment of receipt, an appeal to the minister in charge of labour and social welfare against the enforceable measures taken pursuant to subparagraph f) of this Article.

The minister shall notify their decision to the employer or their representative within one month from receipt of the appeal. In case of silence, the minister is deemed to have accepted the appeal.

Art. 198.

Labour inspectors and controllers shall not be allowed to have any kind of interest, direct or indirect, in companies or establishment placed under their supervision.

They must consider as absolutely confidential the source of any complaint notifying them of defect in the facility or breach of statutory provisions and must refrain from revealing to the employer or their representative that an inspection visit was carried out after a complaint.

Various means shall be made available to them by the minister in charge of labour and social welfare.

Art. 199.

Pursuant to Articles 187, 196 and 197 of this Act, the terms "statutory and regulatory provisions" shall include, in addition to the law and regulation, collective agreements whose supervision and enforcement the labour inspection is responsible for.

Art. 200.

Any means, in personnel, material, transportation, desks and offices appropriately organised for the service's needs and accessible to all concerned parties shall be permanently available to the labour inspection.

CHAPTER III
EMPLOYMENT

Art. 201.

Employment is any licit activity which can provide an individual with the necessary income to meet the individual's basic needs.

Art. 202.

The minister in charge of labour and social welfare shall apply the national employment policy through the Employment Department and the National employment office.

Section 1

Employment Department

Art. 203.

The main purpose of the Employment Department shall be to participate in the design, definition and implementation of the employment policy. It is responsible, among others, for:

- preparing a periodic statement on the situation of employment and its evolution,
- draft texts for the regulation of employment, vocational training and guidance,
- draft technical agreements with foreign countries,
- monitor employment of nationals and foreigners,
- regulate employment of the rural and urban informal sector.

Section 2

National Employment Office

Art. 204.

A public institution of technical and social nature with legal personality shall be created, and called: *National Employment Office*.

Art. 205.

The main purpose of the National Employment Office shall be to promote employment and realise, in collaboration with concerned public or private bodies, the more efficient organisation of the labour market.

Art. 206.

A decree of the President of the Republic shall set the statutes, organisation and operating of the National Employment Office.

Art. 207.

An order of the minister in charge of labour and social welfare, after opinion of the National Labour Council, shall set the conditions of opening and operating private investment services.

CHAPTER IV

NATIONAL COMMISSION

ON THE EMPLOYMENT OF FOREIGNERS

Art. 208.

A "National Commission on the employment of foreigners" shall be created under the responsibility of the Ministry in charge of Labour and Social Welfare.

Art. 209.

The general purpose of the National Commission on the employment of foreigners shall be to issue working permits to foreigners.

To this effect, it shall decide on the request of employment and on the renewal of working permits for foreigners and shall advise the minister in charge of labour and social welfare on the measures likely to improve legislation protecting the national workforce against foreign competition.

Art. 210.

The minister in charge of labour and social welfare shall set by order, after opinion of the National Labour Council, the operating rules of the National Commission on the employment of foreigners.

Art. 211.

A tax shall be collected on the operations regarding the issue of work permits for foreigners.

The rate as well as conditions of collection of this tax shall be set by an order jointly signed by the ministers in charge respectively of labour and social welfare as well as finance and budget.

TITLE X
SUPERVISORY MEANS

CHAPTER I
DOCUMENTS

Art. 212.

The contract of employment in writing must include, at minima, the following indications:

1) name of the employer or corporate name,
2) Social security national institute registration number of the employer,
3) first, middle and last names and gender of the worker,
4) Social security national institute affiliation number of the worker,
5) date of birth of the worker or, where applicable, the last two digits of the supposed year thereof,
6) place of birth of the worker and nationality,
7) matrimonial situation of the worker:
- first, middle and last names of the spouse,
- first, middle and last names and date of birth of each dependent child,
8) nature and conditions of work to carry out,
9) amount of the remuneration and other agreed benefits,
10) place(s) of performance of the contract,
11) duration of the agreement,
12) duration of the notice period,
13) date of entry into force of the contract,
14) place and date of conclusion of the contract,
15) ability to work duly certified by a physician.

Art. 213.

Any employer, other than the one who exclusively employs house personnel, must keep a payroll in each of the business offices of the company, for the workers, regardless of the nature or duration of their agreement.

For each pay, any kind of amount allocated as remuneration must be entered in the payroll.

Art. 214.

The payroll shall be composed of sequentially numbered pages, each of them containing at least two removable copies whose purpose shall be determined by ministerial order as pursuant to Article 103 of this Code.

Art. 215.

The payroll must be compliant with the template set by order of the minister in charge of labour and social welfare.

In companies or establishments whose accounting is kept by transfer or automated management method, the labour inspector may allow the replacement of the payroll by any other document, provided the essential indications are compliant with those stated in the order provided for in paragraph 1 of this Article.

Employers with less than twenty five workers usually, may use a payroll based on the template set.

Art. 216.

Any natural or legal person, public or private, which intends to engage in any kind of activity, whether permanent or seasonal, requiring employment of workers, within the meaning defined in Article 7 of this Code, shall be required to declare so tothe ministry's relevant department in charge of employment and to the Office national de l'Emploi (O.N.Em. "the national employment office") during the fortnight which precedes the opening of the company or the establishment. .

Art. 217.

Upon contracting, any worker becomes, during the next fifteen days, the subject of a declaration made by the employer and addressed by the latter to theministry's relevant department in charge of employment and to the Office national de l'Emploi (O.N.Em. "the national employment office")..

Any worker leaving the employer, for any kind of reason, must be the subject of a declaration, made under the same conditions, including the date on which the worker left the company.

Art. 218.

Any company or establishment must address, at least once a year, to theministry's relevant department in charge of employment and to the Office national de l'Emploi (O.N.Em. "the national employment office"), a declaration of the national and foreign workforce employed.

In addition, they must provide every year the company's social balance sheet to the aforementioned services..

Art. 219.

The Ministry in charge of Employment shall determine, by order, the conditions to declare as stated in Articles 216, 217 and 218 hereinabove, as well as exemptions which may be granted with regards to some categories of companies or workers.

CHAPTER II
SOCIAL SECRETARIATS

Art. 220.

Social secretariats may be constituted for the purpose of completing, as authorised representatives of their affiliates, any formalities imposed on employers by Chapter I of this Title as well as the legislation on social security, regulation on the business tax on wages and, in general, labour law.

Art. 221.

The opening of a social secretariat shall be subject to the payment of a deposit and to the authorisation by the minister in charge of labour and social welfare granted on the basis of the local labour inspector's opinion.

In case of definitive closing, the deposit shall be reimbursed.

Art. 222.

An order of the minister in charge of labour and social welfare, after opinion of the National labour council shall set the implementation rules of the provisions of this Chapter.

TITLE XI
NATIONAL LABOUR COUNCIL

Art. 223.

An advisory body known as the "National labour council" shall be established, with the minister in charge of labour and social welfare. It may be integrated in larger bodies in charge of studying economic, financial and social problems.

The National labour Council is chaired by the minister in charge of labour and social welfare or by their representative.

It includes an equal number of State representatives, workers and employers.

Its secretariat is handled by the ministry of labour and social welfare.

Art. 224.

Seats allocated to representatives of each one of the groups mentioned in the previous section shall be determined by order of the minister in charge of labour and social welfare.

State representatives shall come from the following ministries:

- Ministry of Labour and Social Welfare,
- Ministry of Finance and Budget,
- Ministry of Economy,
- Ministry of Civil Service,
- Ministry of National Education,
- Ministry of Planning,
- Ministry of Justice,
- Ministry of Social Affairs and Family,
- Ministry of Public Health,
- Ministry of Youth, Sports and Recreation,
- Ministry of Human Rights,
- Ministry of Agriculture, Fisheries and Livestock.

Representatives of workers and employers shall be appointed by the professional organisations recognised as the most representative at national level by the ministry of labour and social welfare.

State representatives from ministries as well as representatives or workers and employers shall be invested by order of the minister in charge of labour and social welfare.

The representative nature of a professional organisation of workers shall be determined by the number of votes cast for the elections of worker representatives in the company as pursuant to Articles 255 and 256 of this Code.

The representative nature of a professional organisation of employers shall be determined by the number of workers employed in the companies which are members.

Without professional organisations of workers or employers which may be considered as the most representative, the seats allocated to workers and employers shall be directly appointed by the minister in charge of labour and social welfare.

Art. 225.

In addition to the cases provided for in this Code, the opinion of the National labour council is required on all draft laws, decree-laws, ministerial decrees and orders where their purpose is to modify or create obligations or rights for workers and employers in terms of labour or social welfare.

The National labour council also has a general mission to:

a) consider all issues pertaining to employment, labour and social welfare,
b) consider all elements which may form the basis for setting the guaranteed minimum inter-occupational wage and its economic consequences,
c) issue opinions and draft proposals and resolutions on regulation in these matters.

Art. 226.

At the request of its chairman or of professional organisations of employers and workers, the National labour council may convene, under an advisory capacity, experienced officials and invite in the same capacity any individual experienced in the matters listed in the agenda.

These officials and individuals shall express their opinion but may not take part in the voting.

Under the same conditions, the Council may request from the competent authorities, through their chairman as an intermediary, any document or information relevant to the completion of its mission.

Art. 227.

When the National labour council has to decide on issues pertaining to workers' health of safety, convocation or invitation of physicians, technicians or experts shall be automatic.

Art. 228.

The operating conditions of the National labour council shall be determined by order of the minister in charge of labour and social welfare.

The Council shall meet at least twice a year, convened by its chairman or upon application of professional organisations of employers and workers.

Art. 229.

The mandate of a member of the National labour council shall be unpaid.

However, allowances for meetings attended by members of the Council, the technical team and secretariat may be allocated by ministerial decree, issued jointly by the ministers in charge respectively of labour and social welfare, finance and budget.

When a member is required to travel from his usual place of residence to the meeting venue, expenses for the round trip shall be covered by the State.

The term of mandate shall be two years renewable.

The employer of a member of the National labour council must give to the latter the time required to attend meetings. This time shall be considered as service time for the calculation of seniority and leave entitlements.

TITLE XII
PROFESSIONAL RELATIONS

CHAPTER I
PROFESSIONAL ORGANISATIONS

Art. 230.

Workers and employers as defined in Article 7 of this Code are entitled to establish themselves as organisations with the sole purpose of the study, protection and development of their professional interests as well as the social, economic and moral progress of their members.

Art. 231.

Where the formalities laid down in this Chapter are completed, no prior authorisation shall be required to constitute a professional organisation.

Art. 232.

Organisations of workers and employers are entitled to draw up their statutes and rules, to freely elect their representatives, manage their administration and activity and to formulate their programs, subject to the provisions of this Chapter.

Art. 233.

Any worker or employer, without any distinction, has to right to join a professional organisation of their choice, or to withdraw from it.

At any time, any member of a professional organisation may withdraw, notwithstanding any clause to the contrary in the statutes.

Any person who withdrew from a professional organisation may retain their right to be a member of friendly or pension funds societies whose assets they contributed to by means of contributions or payments of funds.

Art. 234.

Workers shall be adequately protected against all acts of discrimination which tend to prejudice freedom of association in terms of employment.

Any employer shall be prohibited to:

a) condition the hiring of a worker to their membership or non-membership of any professional organisation or of a specific professional organisation,

b) dismiss a worker or harm by any other means, on the ground of their membership of a professional organisation and their participation in union activities.

Art. 235.

Organisations of workers or employers must refrain from any interfering act between each other in their establishment, operating and their administration.

Art. 236.

An order of the minister in charge of labour and social welfare taken after opinion of the National labour council shall define the interfering acts referred to in the preceding Article.

Art. 237.

Trade union shall be understood as any professional organisation formed for the purpose defined in Article 230 hereinabove.

Art. 238.

Trade unions shall be required to register with the ministry of Labour and Social Welfare where the registry of trade unions of workers and employer is permanently kept.

Art. 239.

Any registration application by a union shall be addressed to the ministry of Labour and Social Welfare.

The application indicates the full identity of members responsible for the union's administration and management. It is signed by each one of them.

Copies of the applicant organisation's statutes shall be attached, the number of which shall be set by the minister in charge of labour and social welfare.

Art. 240.

The applicant trade union's statutes must include:

1) the union's corporate name and headquarters' address
2) its purpose
3) terms of membership, withdrawal and expulsion of members,
4) method of appointment, powers and term of the mandate of members responsible for the union's administration and management,
5) rules pertaining to the financial management of the trade union and especially to the method and schedule for the preparation of accounts, investment of funds and their allocation in the event of dissolution of the trade union,
6) method of audit and powers granted to the members for the purpose of enabling them to control the management of the union's assets,
7) date of the General Meeting and mode of decision thereof,
8) penalties for non-compliance of the statutes,
9) procedure to amend the statutes and dissolution of the union,
10) procedure to settle internal conflicts between executive members within the same union.

Art. 241.

No one shall be responsible for the union's administration or management unless they fulfil the following conditions:

1. To be at least 21 years old.
2. To have the Congolese nationality.

In the event that the person is of foreign nationality, and subject to reciprocity, the claimant/petitioner must have worked in the Democratic Republic of Congo for at least twenty years without a break, under the Labour Code.

May not be appointed as member of the applicant union's administration and management:

a) someone who, during the past three years, has received a more than two months' imprisonment sentence with the exception ofordinary and linked to union activities. press offenses ,
b) someone interned or hospitalised for insanity,

c) someone who is convicted of bankruptcy,
d) inmates who are serving a term of imprisonment after a final conviction,
e) someone who has been convicted of a jus commune offence, with the exception of press offences of political nature, to a term of imprisonment of at least three years, and who have not been rehabilitated.

Art. 242.

Prior to the registration, the minister in charge of labour and social welfare shall verify the compliancy of the statutes regarding:

1) the purpose for which the union trade is established,
2) the legislation and regulation in force,
3) the requirements laid down by this Code and its implementing texts.

Where the statutes of a trade union do not meet the requirements of the preceding paragraph of Article 241 hereinabove or fall under the provisions of the second paragraph of the same Article, the minister in charge of labour and social welfare shall object to the registration and request the required changes.

Prior to refusing the registration of a trade union, the minister must notify the reason(s) thereto.

Art. 243.

The trade union which has received such notice shall have one month to submit its observations. After this period, the minister in charge of labour and social welfare may refuse the registration of any union which has failed to submit its observations or to demonstrate that the refusal of its registration was groundless. The justified decision of the minister shall be immediately notified to the concerned organisation. It may be appealed against in court.

Art. 244.

Where registration is granted, the minister in charge of labour and social welfare shall immediately address to the applicant trade union the decision of registration.

Within three days of receipt of the decision, the trade union shall address a copy of its statutes to the public prosecutor at the district court within whose jurisdiction the union's headquarters are located.

Art. 245.

The registry of trade unions, kept at the ministry of Labour and Social Welfare, must provide, for each union, the following information:

1) the union's corporate name and headquarters,
2) its purpose,
3) first, middle and last names and addresses of the persons responsible for the union's administration and management,
4) the serial number and date of registration.

The registry may be accessed at the ministry in charge of labour and social welfare.

Art. 246.

Any amendment of the statutes and any change in the composition of a union's management and administration must be immediately communicated to the minister in charge of labour and social welfare.

Any amendment of the statutes shall be subject to the same provisions of registration as the statutes themselves.

Within forty-five days from the receipt of this amendment, the minister shall notify the trade union of the amendment's compliance with the law.

In the absence of reply within this period, the request shall be deemed accepted.

Art. 247.

A trade union may be removed from the register by order of the minister in charge of labour and social welfare in case of dissolution decided in accordance with the rules provided by its statutes or of dissolution pronounced by a court.

The union must inform the minister within 30 days.

Art. 248.

The minister in charge of labour and social welfare is responsible for informing third parties, by means of publication in the *"Official Journal"*:

a) of the registration of a trade union ,
b) of the cancellation of this registration,
c) of any change affecting a trade union.

The trade union shall not bear any expenses for this publication.

Art. 249.

Any registered trade union shall have a legal personality. It has the right to acquire, in compliance with jus commune, with or without cost, movable or immovable property necessary for the promotion and the protection of its members' interests.

Buildings and accessories, furniture, books and teaching materials necessary for the meetings, libraries and vocational training of members of a registered trade union may not be seized.

Art. 250.

Trade unions registered in accordance with the provisions of this Code may freely liaise with each other to promote and defend the interests of workers and employers.

They may for a union, confederation or federation. When duly registered, these have the same rights and are under the same obligations as the trade unions which compose them.

The provisions of this Chapter shall be applicable to unions, confederations and federations of trade unions.

Their statutes must determine the rules according to which the trade unions members of the union, confederation or federation shall be represented at General Meetings.

Art. 251.

Any trade union may be ipso jure dissolved:

1) where the purpose for which it was formed is achieved,
2) where two thirds of the members in a General Meeting vote for its dissolution.

Art. 252.

Organisations of workers and employers may not be subject to dissolution or suspension by the administration.

Art. 253.

In case of dissolution, the assets of the trade union shall be transferred in accordance with the statutes.

In any case, the assets of a trade union may only be transferred by way of gift to another trade union, legally established, or to a charity or pension schemes.

The trade union's assets may not in any circumstance be distributed among its members.

Art. 254.

An order of the minister in charge of labour and social welfare shall determine, where required, the implementation rules of this Chapter.

CHAPTER II
REPRESENTATION
OF WORKERS IN THE COMPANY

Art. 255.

The representation of workers in companies or establishments of any kind shall be ensured by an elected delegation.

The members of the union delegation shall be supervised, trained and monitored in their union activities within the company by their respective professional organisations, within the period and under the conditions imposed by this Code, the collective agreement, the company rules and internal rules of the union delegation. An order of the minister in charge of labour and social welfare, after opinion of the National labour council, shall determine:

1) the number of workers from which and the categories of companies or establishments in which the creation of a delegation is mandatory,
2) the number of representatives and their distribution on a professional level,
3) the conditions of voting and eligibility of workers and the procedures of the election to be held in direct and secret ballot from a list, in two rounds,
4) the resources available to representatives,
5) the conditions in which the delegation shall be met by the employer or their representative,
6) the composition of the union delegation's board.

Art. 256.

In case of disputes pertaining to voting, eligibility and regularity of the elections, the appeal procedure shall be determined by order of the minister in charge of labour and social welfare, after opinion of the National labour council.

Art. 257.

The mandate of representatives shall be three years, renewable.

Representatives shall lose their capacity:

a) where they cease to fulfil the conditions of eligibility,
b) where they resign or are dismissed,
c) where they are disallowed by the workers of the company, members of their trade union, for gross negligence while performing their union mandate or where they are subject of a disciplinary measure duly imposed by the statutory bodies of their trade union.

In such cases, the trade union shall notify the employer which acknowledges such measure and the local labour inspector.

However, the loss of mandate as union representative shall only take effect after verification, by the labour inspector, of the measure's compliance with the internal rules of the union delegation in the first case, and with the concerned trade union's statutes in the second case.

The labour inspector shall notify its decision to the concerned trade union within thirty days of receipt of the latter's request.

After this period, the inspector is deemed to have accepted said measure.

Where the partial or whole vacancy concerns especially the representative trade union, the concerned trade union shall proceed to co-opt in accordance with the list submitted for the elections. It shall sign a statement with the employer, which sends it to the local labour inspector for information.

In case of vacancy of the mandate prior its expiry, for resignation, death or any other cause, the substitute representative shall complete the mandate of the one whom they replace.

The substitute shall replace the representative where the latter is absent or unavailable.

In case of partial or total vacancy prior to the mandate's expiry, the concerned trade union shall proceed to co-opt in accordance with the list submitted for the elections.

The mandate of the representative may entail neither harassment nor harm nor special benefits for the one who performs it. Representatives shall have the regular promotions and advancements of the category of workers to which they belong.

An order of the minister in charge of labour and social welfare, after opinion of the National labour council, shall set the implementation rules of subparagraph c) of this Article.

Art. 258.

Any dismissal of a representative or substitute contemplated by the employer or their representative, as well as any transfer with the effect of losing their capacity of representative shall be subject to the suspensive condition of approval by the local labour inspector.

Where the reason given by the employer is gross negligence, it may pronounce the suspension of the duties of the concerned party under the conditions laid down in Article 72 of this Code. In any case, the dismissal shall take effect only after decision of the labour inspector.

The measure taken or contemplated by the employer must be notified to the labour inspector by hand-delivered or registered letter with acknowledgment of receipt. The labour inspector must notify their decision within one month from receipt of the employer's letter.

Past this period, the inspector is deemed to have accepted it.

The labour inspector's decision may be appealed against in court, under the conditions laid down by order of the minister in charge of labour and social welfare, after opinion of the National labour council.

Except in case of gross negligence, the notice period to be observed in case of dismissal of a representative or substitute is twice the period applicable in accordance with the provisions of Article 64 of this Code, without being less than three months.

Except in case of gross negligence, candidates for the representation of workers may not be dismissed from the submission date of the electoral lists until the ballot results are announced.

The candidates not elected or not re-elected benefit for a six month period after the elections from the notice rules provided for the preceding paragraph.

Art. 259.

The delegation's authority extends to all working conditions in the company or establishment.

The employer must consult with the delegation regarding:

- working hours,
- general requirements for hiring, dismissing and transferring workers,

- remuneration and bonus systems in force in the company or establishment in accordance with statutory and regulatory provisions or of collective agreements in force,
- drafts and changes to company regulation and, where applicable, workshop rules.

Art. 260.

The delegation shall take part in settling problems arising from maintaining discipline and may propose any measure deemed necessary where the lack thereof threaten to seriously jeopardise the operating of the company or establishment.

Art. 261.

The delegation shall take part in the management of social actions established by the employer for their personnel, especially any employee store as provided for in Articles 115 to 118.

It shall facilitate the preparation and implementation of collective programs of vocational training.

Art. 262.

The delegation shall aim at ensuring technical safety, hygiene and cleanliness on the workplace as well as safeguarding the health of any person in the company or establishment.

For this purpose, it may, among others:

- propose any measure to ensure the implementation of statutory and regulatory provisions relating to work safety and cleanliness on the workplaces,
- propose any measure deemed necessary to remedy the causes of danger or health conditions observed or notified,
- provide workers with necessary advice for the implementation of hygiene and safety measures,
- promote the development of a spirit of prevention among workers with regards to work-related accidents and occupational diseases.

Art. 263.

Every semester at least, the employer shall provide the delegation with information on the operating and the economic and social situation of the company or establishment, along with the turnover or equivalent data, general index of productivity, overall profits, changes of the selling prices, outline of the development program, future prospects.

In the absence of collective agreement, an agreement between the employer and the delegation may set, taking into account specific contingencies of the company of establishment:

- implementation rules of the preceding paragraph,
- list of details which the employer shall refrain from communicating,
- details which may be disclosed to the personnel.

In any case, the representatives may not disclose confidential information which came to their knowledge while performing their duties.

Art. 264.

Outside meetings, each representative shall be vested of the authority to:

- submit to the employer all individual claims which may not have been directly answered regarding working conditions and workers' protection, implementation of collective agreements and of the job classification,

- ensure the implementation of requirements pertaining to workers' hygiene and safety and propose any necessary measure in this regard,
- ensure work discipline,
- bring before the labour inspector any complaint or claim relating to the statutory or regulatory requirements, the implementation of which the latter is responsible for, and which could not be settled by the delegation.

The representatives may be received by the labour inspector every time that they shall visit and inspect the company or establishment.

Art. 265.

The minimum number of hours required by the workers' representatives to perform their duties shall be set at fifteen per month. These hours shall be considered and remunerated as working hours.

The conditions under which they are granted shall be determined by the order referred to in Article 255 of this Code.

Art. 266.

Notwithstanding the provisions hereinabove, workers may submit themselves complaints or claims to the employer or their representative or to the labour inspector.

However, in companies where there is no union delegation, workers may submit themselves to the employer or their representative or to the labour inspector. They may, where applicable, be assisted by the union of which they are member, in the presence of the labour inspector.

CHAPTER III
WORKERS' EDUCATION

Art. 267.

Any duly registered trade union may organise in the territory of the Republic, for the benefit of its members and trade union representatives and their substitutes, placements or training sessions exclusively devoted to workers' education.

In such case, the organisation in charge of the placement or training session must notify the minister in charge of labour and social welfare or their representative and inform them of the start and end dates of the placement or session, the planned program, as well as the names and qualifications of the persons in charge of teaching.

Art. 268.

Union members and representatives or substitutes who will take part in the placements or sessions stated in Article 267 shall be entitled to a leave of workers' education of twelve days per year, excluding travel time.

This leave shall not be deducted from the annual leave referred to in Chapter VI of Title VI of this Code.

Art. 269.

The leave of workers' education shall be taken in one continuous period or two periods.

Without prejudice to the provisions of Article 271, it shall be paid by the employer on the same basis as the statutory annual leave. However, transport and accommodation costs shall not be supported by the employer.

Art. 270.

Application for leave must be submitted to the employer for review by the trade union in charge of the placement or session at least thirty days prior to the set start date. It must include the names of union members and representatives concerned as well as the date and duration of the requested absence.

Art. 271.

The trade union in charge of the placement or session shall provide, at the end of the teaching, to each participating member and representative, with a certificate confirming their attendance and listing all subjects taught.

Each member and representative must submit said certificate to their employer within two days after work resumption. Upon failure to comply with this obligation, the leave granted shall not be remunerated.

CHAPTER IV
COLLECTIVE AGREEMENTS

Art. 272.

The collective agreement is a written agreement relating to the working conditions and relations between, on one hand, one or several employers, one or several professional organisations of employers and, on the other hand, one or several professional organisations of workers.

Art. 273.

Trade unions must be formed and registered in accordance with the provisions of Chapter I of this Title.

Their representatives must show evidence, prior to the start of the negotiations, of their power to enter into an agreement on behalf of the trade union or the professional organisation which they represent.

Art. 274.

The agreement may include provisions more favourable to workers than those in the legislation and regulation in force but may not derogate from public policy.

Art. 275.

The collective agreement shall determine its professional and territorial scope.

Art. 276.

The collective agreement shall be concluded for a definite or indefinite period. In the absence of any fixed term of the agreement, the latter shall be deemed applying for an indefinite period.

Art. 277.

The fixed-term agreement may not be terminated before the expiry of its term. In the absence of clauses to the contrary, the fixed-term collective agreement which reaches expiration shall be automatically renewed; it is then from this moment on, unless terminated, deemed applying for an indefinite term.

Art. 278.

The collective agreement of indefinite term or deemed as such may be fully or partially terminated by the will of one of the contracting parties by means of delivery of a written notice.

The conditions and forms of the termination as well as those of the notice must be determined in the collective agreement. In the absence of indication of a notice period, the latter is set at three months.

Art. 279.

Any collective agreement must be drafted in the official language.

It shall compulsorily include:

- place and date of its conclusion,
- names and capacities of the contracting parties and signatories,
- its professional and territorial scope,
- its purpose,
- its date of entry into effect,
- the procedure of conciliation and arbitration to apply regarding the settlement of collective conflicts between employers and workers bound by the agreement,
- rules applicable in case of temporary and involuntary inability of the employer to ensure normal working conditions for the workers after, especially, problems with the supply or disposal of finished products,
- conditions for collection and payment by workers of union contributions to the interested professional organisation.

It may include, without being limited to, provisions regarding:

- the free exercise of the trade union right,
- wages applicable by job classes,
- conditions of hiring and dismissing workers,
- paid leave,
- enforcement rules on overtime and the rates,
- travel expenses
- seniority and attendance bonuses,
- general conditions for performance pay, where this method of payment is possible,
- increase of wages for difficult, dangerous or unhealthy work,
- organising and functioning of the teaching and vocational training for the part of the industry concerned,
- organising, managing and funding of social and medico-social services,
- procedures for potential payment of a lump sum indemnity in case of force majeure resulting in the termination of the contract of employment,
- and, in general, all provisions with the purpose to govern the relations between employers and workers in a specific industry.

Art. 280.

The agreement shall be prepared in as many originals as there are parties and signed by all the contracting parties.

Six additional originals shall be subject to approval by the local labour inspector who may request the amendment of clauses contrary to the legislation or regulation.

The labour inspector shall submit, free of charge, where the text is compliant, a copy of the agreement, the approval affixed, to the clerk of the labour court. The inspector shall send to the ministry of Labour and Social Welfare at least one copy for the purpose of publishing the agreement in the *"Official Journal"*, free of charge.

Art. 281.

In any company to which the agreement shall apply, the employer must, upon its entry into effect, display the agreement and where applicable its translation in the usual regional language in a place reserved for such purpose, clearly visible and easily accessible to workers.

The employer shall inform any worker prior to their joining the company of the collective agreement and where applicable its translation in the usual regional language.

Any professional organisation having concluded a collective agreement shall ensure that its members, concerned by it, may as soon as possible be informed of the contents and the explanatory note attached to the agreement, where the parties prepare one.

Art. 282.

Any agreement may be reviewed under the conditions and in the form provided by it.

Articles 279, 280 and 281 above shall be applicable in case of review of a collective agreement.

Publication of the revision document in the *"Official Journal"* is mandatory and free of charge.

Art. 283.

In case of discrepancy between the text of different copies of the collective agreement, the original filed with the clerk of the labour court shall prevail to the exclusion of any other text.

Art. 284.

At the request of a trade union representative of interested workers or employers, or on its own initiative, the minister in charge of labour and social welfare may create a joint committee to settle by means of collective agreement, the relationships between one or several trade unions of employers and one or several trade unions of workers of one or several specific industries.

The minister shall decide on the professional and territorial jurisdiction of the committee. The latter shall be composed, on one hand, of worker's representatives and, on the other hand, one or several employers or their representatives.

Workers' and employers' representatives shall be appointed by the concerned trade unions and organisations.

Representatives of public authority may be part of the committee as advisors.

Functioning of joint committees shall be determined by order of the minister in charge of labour and social welfare, after opinion of the National labour council.

Art. 285.

Setting up a joint committee as stated in the preceding Article shall be mandatory where Article 287 hereinafter applies.

Art. 286.

Any employer or professional organisation of employers and workers established in compliance with the provisions of this Code and duly registered, which is not a party to any collective agreement, may join after a six month period from the date of entry into force of the agreement. Membership may not be unilateral. It shall be subject to approval by the signatory parties. In the absence of an explicit request to join, no professional organisation of employers or workers may be a party to a pre-existing collective agreement. The member acquires the rights and obligations of the contracting parties. However, it may not exercise the right of termination within two years from their membership.

Art. 287.

Where a collective agreement was published in the *"Official Journal"*, the minister in charge of labour and social welfare may, at the request of one of the parties and after opinion of the joint committee referred to in Article 284, decide on the extension of all or some provisions to all employers and workers in the same professional and territorial sector. The minister may, under the same conditions, decide on repealing an extension.

Art. 288.

Implementation rules of provisions of Articles 286 and 287 hereinabove shall be determined by order of the minister in charge of labour and social welfare, after opinion of the National labour council.

Art. 289.

The collective agreement shall be binding on:

1) all contracting parties,
2) natural or legal persons which they represent,
3) natural or legal persons which are or become members or contracting professional organisations.

Provisions of a collective agreement shall apply to all workers of the categories concerned, employed in the company or companies covered by the agreement, unless otherwise provided.

Art. 290.

The extended collective agreement shall be binding for employers and workers to whom it is extended.

Art. 291.

The provisions of the collective agreement shall be applicable notwithstanding contrary provisions of individual contracts of employment and company regulations or any other contrary provisions agreed upon between employers and workers. These provisions shall be deemed replaced the provisions of the collective agreement.

Shall not be deemed contrary to the provisions of the collective agreement, those that are considered as more favourable to workers who are beneficiaries.

Art. 292.

The provisions of a collective agreement may not restrict benefits for workers which result from collective agreements whose scope is wider.

The collective agreement shall determine the extent to which the existing collective agreements between all or some of the parties and of a more limited scope shall remain in force.

Art. 293.

In case of substitution of the employer, the new employer shall be subrogated to the rights and obligations of the previous employer.

The collective agreement shall remain binding on the professional organisations resulting from the division of an organisation that is party to the agreement.

In case of merger of union, confederation or federation or professional organisation, one of which is party to a collective agreement, the agreement shall become binding on any professional organisation as well as its members belonging to the new organisation, within the limits of the agreement's scope.

Art. 294.

Employers, professional organisations of employers and workers, as well as those who represent them, parties to a collective agreement, must abide in good faith by the resulting commitments and refrain from any action likely to jeopardise such fair compliance.

Professional organisations of employers and workers shall be required in addition to ensure compliance by their members of the collective agreement's provisions. They shall guarantee such compliance to the extent determined by the agreement.

Art. 295.

Violation of the obligations agreed shall entitle the parties to a claim for damages, whose conditions and limits may be indicated in the agreement.

Art. 296.

Professional organisations entitled to bring an action before court and which are parties to the collective agreement may bring all actions arising from of this agreement in favour of their members without having to justify a mandate from the concerned members, provided the latter have not declared their opposition to such action. Concerned parties may at any time intervene in the case.

Where an action, arising from the collective agreement, is brought by a natural or legal person, any other contracting party may at any time intervene in the case.

TITLE XIII
INDIVIDUAL AND
COLLECTIVE LABOUR DISPUTES

Art. 297.

Individual and collective labour disputes shall be governed by the procedures laid down in this Title.

CHAPTER I
PRIOR CONCILIATION
IN INDIVIDUAL DISPUTES

Art. 298.

Individual disputes shall not be admissible before the labour court if they have not been subject to the procedure of conciliation, at the initiative of one of the parties, before the local labour inspector.

Art. 299.

This procedure shall interrupt the lapse periods stated in Article 317 of this Code, as soon as receipt of the request for conciliation to the labour inspector, provided however that the action before the labour court, in the event of non-conciliation, shall be brought within twelve months maximum from receipt of the report of non-conciliation by the most diligent party.

Art. 300.

Where the labour inspector has been requested to decide on an individual labour dispute, the inspector shall send, with acknowledgment of receipt or by registered letter, an invitation to appear in conciliation session within fifteen days.

In any case, the invitation may not force one of the parties to appear within less than three days.

The labour inspector shall proceed to an exchange of opinions on the dispute's issue and ascertains whether the parties have appeared with the purpose of conciliating pursuant to the rules set by law, regulation, collective agreements or the individual labour contract.

Parties may be assisted or represented.

At the end of the exchange of opinions, the labour inspector shall prepare a report to state the conciliation or absence thereof. This report shall be signed by the labour inspector and the parties. The latter shall receive a copy of it.

If at the third invitation duly received, a party does no appear or is not represented, the labour inspector shall prepare a report of defaulting as statement of non-conciliation.

Art. 301.

In case of conciliation, the most diligent party shall have the enforceable order affixed on the report by the presiding judge of the competent labour court.

The presiding judge of the competent labour court shall be the one in whose jurisdiction the report is signed.

The report shall be enforced as if it were a decision of the labour court.

Art. 302.

In case of complete or partial failure of the conciliation attempt stated in Article 300, the dispute may be submitted to the labour court.

CHAPTER II
PRIOR CONCILATION AND MEDIATION OF COLLECTIVE LABOUR DISPUTES

Section 1
Prior conciliation of collective labour disputes

Art. 303.

Shall be considered collective labour dispute, any dispute arising between one or several employers on one hand, and a certain amount of members of their personnel on the other had, regarding working conditions, where it is likely to jeopardise the smooth operating of the company or the social peace.

Art. 304.

Collective labour disputes shall only be admissible before labour courts only where they have been first subject to the conciliation and mediation procedure, where applicable, respectively at the initiative of one of the parties before the labour inspector or minister in charge of labour and social welfare or of the provincial governor before the mediation committee.

Art. 305.

In case of non-conciliation, partial conciliation or recommendation subject to opposition, the request shall be submitted to the labour court by one of the parties within ten working days from the expiry of the demonstration or lock-out notice which has been notified to the other party.

Art. 306.

Failing an agreed settlement procedure, the statutory dispute conciliation and mediation procedure shall be determined as pursuant to Articles 307 and 315 of this Code.

Art. 307.

Any collective labour dispute shall be notified by the most diligent party to the local labour inspector.

However, labour inspectors may start a conciliation procedure where they know of a collective dispute which they have not been notified of.

Within three working days from notice, the labour inspector shall send by hand-delivered letter with acknowledgement of receipt or by registered letter, to the parties an invitation to appear in conciliation session within fifteen days, with a notice period of at least three working days from the date of receipt.

Within two working days of receipt of this invitation, parties shall inform beforehand the labour inspector, in writing, of the names of representatives who are authorised to conciliate. The latter may be assisted of a representative of their professional organisations, duly authorised.

Where one of the parties does not appear, is not represented or where the representatives do not appear, the labour inspector shall prepare the report, based on which the competent court shall pronounce the fine stated in Article 322 of this Code.

In addition, the labour inspector shall prepare a report of defaulting as statement of non-conciliation.

Art. 308.

The labour inspector shall proceed with the parties or their representatives and under his chairmanship, to any exchange of views on the dispute's issue.

At the end of the exchange of views, the labour inspector shall prepare a report to state either the agreement or complete or partial disagreement between the parties; these shall sign the report and receive a copy of it.

This conciliation agreement or disagreement must be notified during the month as from the first conciliation session.

The conciliation agreement shall be enforceable under the conditions laid down in Article 314 of this Code.

Section 2

Mediation of collective labour disputes

Art. 309.

In case of complete or partial non-conciliation, the dispute shall be mandatorily subject to the statutory mediation procedure, as defined in Articles 310 to 315 of this Code.

Where the dispute impacts one or several establishments located in one province, the local labour inspector shall communicate the file to the provincial governor within forty-eight hours of the failure of the conciliation attempt.

Where the dispute impacts several establishments of one company or several companies located in several provinces, the local labour inspector shall communicate the file within the same time period to the minister in charge of labour and social welfare.

Art. 310.

Collective disputes not settled in conciliation by the labour inspector shall be subject to a Mediation Committee specifically created to this effect.

The Committee shall be composed of the presiding judge of the *Tribunal de paix* [Peace Court] in whose jurisdiction the dispute arose or of a magistrate they appointed, of an employer assessor and a worker assessor. It shall be chaired by the presiding judge of a Peace Court or the magistrate they appointed.

Assessors shall be appointed on propositions of the most representative professional organisations by:

- the provincial governor in the case referred to in paragraph 2 of Article 390 hereinabove,
- the minister in charge of labour and social welfare in the case referred to in paragraph 3 of the same Article.

Assessors must be external to the establishment or to the establishments impacted by the conflict.

Appointment of assessors and communication of the dispute file to the chairman of the Mediation Committee shall take place within four working days of receipt by the competent authority of the report of non-conciliation.

Art. 311.

The Mediation Committee shall meet within three working days of the referral. It may not rule on issues other than those determined by the report of non-conciliation or those, resulting from events occurred after this report, are the direct consequence of the on-going dispute.

The Committee shall rule in law in disputes pertaining to the interpretation and the enforcement of legislative or regulatory acts or of a collective agreement. It shall rule in equity in all other disputes.

It shall enjoy wider powers to be informed of the economic situation of companies or establishments and of the situation of workers concerned by this dispute.

It may proceed to any inquiry in companies or establishments and professional organisations, and require from the parties, the production of all documents or information of economic, accounting, statistic, financial or administrative nature likely to be useful for the fulfilment of its mission. It may also use expert firms.

Members of the Committee shall be under the obligation of professional secrecy regarding the information and documents communicated as well as facts which they may learn of while carrying out their mission.

Committee sessions shall not be accessible to the public.

The Committee shall conclude its inquiry within ten working days from the first session.

Where during the deliberations, votes are equally divided, that of the chairman shall prevail. The decision rendered in writing and signed by the chairman and members must intervene within five working days from deliberation of the case.

Failing this, a Committee composed differently shall be appointed as pursuant to the provisions of Article 310 so as to imperatively render its decision within ten working days from the appointment.

Art. 312.

In case of agreement, an official report shall be prepared by the chairman of the Committee. It shall be signed by the Committee members and by the parties or their representatives.

Certified true copy of the official report shall be delivered at no cost to the labour inspector, to the parties or their representatives.

Art. 313.

In case of non-conciliation, the Committee shall draft justified recommendations which are immediately notified to the parties.

A certified true copy of the recommendations shall be delivered at no cost to the labour inspector and to the parties or their representatives.

Upon expiry of a seven day period, from the parties' notification, and where no party has shown an intention to oppose the recommendations, they shall become enforceable under the conditions set in Article 314 hereafter.

Opposition shall be made, under penalty of nullity, by letter addressed to the Chairman of the Committee and to the other party. The opposing party shall address, at the same time, a copy of said letter to the local labour inspector.

Art. 314.

Enforcement of a conciliation agreement reached either before the labour inspector or before the Mediation Committee and that of the recommendations not subject to opposition shall be mandatory for the concerned parties.

Where they are silent on this point, the conciliation agreement and the recommendations shall take effect from the day of the labour dispute's notification to the labour inspector.

Conciliation agreements and recommendations not subject to opposition shall be displayed in the premises of the establishments impacted by the dispute and in the local labour inspector's office.

Minutes of agreements and recommendations shall be filed with the clerk of the labour court of the dispute's place.

The conciliation and mediation procedure shall be without cost.

Art. 315.

Collective cessation of work or participation in this collective cessation of work may only occur in the instance of a collective labour dispute and once means of dispute settlement, provided for in agreements or by law, as hereinabove, have been regularly used.

Shall be prohibited all acts and all threats which could coerce a worker to participate in a collective cessation of work or to prevent work or the return to work.

Where a collective cessation of work is started at the end of an agreed procedure or the statutory procedure of settlement, shall be prohibited all threats, all harm and prejudicial measures towards workers who intend to take part or who took part in it.

An order of the minister in charge of labour and social welfare, after consulting the National labour council, shall set the implementation rules of this Article.

CHAPTER III
LABOUR COURTS

Art. 316.

An Act shall create labour courts and determine their organisation and operating.

CHAPTER IV
LAPSE PERIODS

Art. 317.

Actions arising from the contract of employment shall be barred three years after the event giving rise to the claim, with the exception of:

1) actions for payment of wages which shall be prescribed one year from the date on which wages are due,
2) actions for payment of travel and transportation costs which shall be prescribed two years after the beginning of the right to travel, under the contract, or after termination of the latter.

The prescription shall only be interrupted by:

a) summons,
b) statement of an account between the parties which indicates the outstanding balance payable to the worker,
c) claim made by the worker against the employer, by registered letter with acknowledgment of receipt,
d) claim made by the worker before the labour inspector, subject to the provisions of Article 299 of this Code.

TITLE XIV
ADMINISTRATIVE SANCTIONS

Art. 318.

Where, at the expiry of the notice period, the employer of their agent, continues to violate the provisions in Articles 6 in subparagraphs a) and e), 87, 119, 120, 121, 125, 126, 128, 133, 171, 177, 255 and their implementing or enforcing regulations, where appropriate, the minister in charge of labour and social welfare or their delegate, on proposal of the labour inspector, may without prejudice to the criminal provisions provided for, order the provisional closure of all or part of the company.

During the closure until the irregularities observed are being put to an end, wages and other benefits are payable and the active contract may not be ended.

Art. 319.

Without prejudice to the provisions of Article 211 of this Code, the President of the Republic may, on proposal of the minister in charge of labour and social welfare, after consulting the National labour council, set the fees and charges pertaining to activities assigned to the Ministry of Labour and Social Welfare.

Art. 320.

Without prejudice to the action stated in Article 295, the authors of breaches of the provisions of a collective agreement extended as pursuant to Article 287 shall be punishable by a fine not exceeding 7.500 CF.

Art. 321.

Shall be punished by a fine not exceeding CF 20.000, the authors of breaches of the following provisions:

a) Articles 6 paragraphs a), b), c) and d), 8, 18, 19, 20, 21, 25, 26, 33 paragraph 2, 44, 47, 51, 55 paragraph 3, 56, 60, 64, 65, 66, 78, 79, 84, 89, 90, 98, 99, 100, 101, 103, 111, 112, 114, 116, 119, 121, 122, 125, 128, 129, 133, 136, 137 paragraph 2, 138, 140, 141, 142, 143, 144, 145, 146, 148 paragraph 1, 152, 154, 157, 167, 176, 178, 181, 212, 213, 215, 216, 217, 218, 221, 229, 234, 258, 265, 268, 269;

b) Decrees stated in Articles 87 and 123;

c) Decrees pursuant to Articles 35, 38, 47, 56, 58, 94, 103, 112, 120, 121, 123, 124, 128, 139, 156, 158, 169, 171, 177, 207, 219, 222, 236 and 255.

Shall be punishable by the same sanction, any person invited or in charge of the representation of parties to an individual or a dispute before the labour inspector or controller, who did not attend after the third invitation, which shall be remitted against acknowledgment of receipt. In such case, Article 322 of this Code shall not be applicable.

Art. 322.

Without prejudice to provisions of Articles 133 to 135 of the Criminal code, shall be punishable by a maximum of 30 day imprisonment and a fine not exceeding CF 30,000 or one of these penalties only, whoever attempts to or prevents the exercise of duties conferred to the labour inspectors and controllers and the Mediation Commission by this Code.

Art. 323.

Without prejudice to the provisions of the Criminal Code, shall be punishable by one month imprisonment and a fine not exceeding CF 25.000 or by any of these penalties only, whoever shall:

- *a)* use violence, threats or other coercion, false promises or fraudulent practices either to hire or be hired, to obstruct a hiring, to coerce a worker into participating in a collective cessation of work either to prevent work or the return to work,
- *b)* induce a worker to refuse fulfilling the obligations imposed by law, regulations, collective agreement, individual contract, or prevent the worker from fulfilling them,
- *c)* voluntarily destroy or deface the written contract, render the entries therein laid illegible, modify them, fraudulently or not,
- *d)* use a written contract or statement in which entries have been degraded or fraudulently modified,
- *e)* violate the regulations on the protection of the national labour force.

Art. 324.

Shall be punishable by two months' imprisonment maximum and a fine of CF 25,000 or by one of these penalties:

- *a)* anyone who has undermined or tried to undermine either the free appointment of workers' representatives in the companies or the regular performance of their duties,

b) any employer who has retained or used for personal gain or for the purposes of his company the amounts or collateral securities.

Art. 325.

Without prejudice to the provisions of the Law 82-001 of 7 January 1982 on industrial property, any person who fraudulently disclosed or communicated to a competitor or to a third party trade or business secrets of their employer, or who engages or cooperates to any act of unfair competition shall be liable to three months' imprisonment maximum and a fine of CF 30,000 or to one of these penalties only.

Art. 326.

Without prejudice to criminal laws allowing for stiffer penalties, anyone who violates the provisions of Articles 2 paragraph 2, 3, 173 and 315 of this Code shall be liable to six months' imprisonment maximum and a fine of CF 30,000 or one of these penalties only.

Art. 327.

Without prejudice to any disciplinary penalties laid down in the State civil service statute, the labour inspector or controller who discloses the secrets and methods stated in Article 194 or violates the obligation of discretion prescribed in Article 198 shall be punished by penalties provided for in Article 73 of the Criminal Code.

Art. 328.

With regards to:

a) breaches of the provisions of Article 215, the fine shall be applied as many times as there are non-registered workers or omitted data,

b) breaches of the provisions of Articles 55, paragraph 3, 56, 79, 86, 89, 98, 99, 112, 113, 120, 121, 125, 126, 128, 133, 137 paragraph 2, 140, 141, 234, the fine shall be applied as many times as there are workers concerned by the breach.

However, the total amount of the fines imposed as pursuant to this Article may not exceed fifty times the maximum rates provided for in the Articles hereinabove.

Art. 329.

Employers shall be civilly liable to pay any fines imposed on their agents pursuant to this Title.

TITLE XVI
TRANSITIONAL PROVISIONS

Art. 330.

The provisions of this Code shall ipso jure apply to active individual contracts provided that workers continue to enjoy the benefits which have been previously granted to them where these are more significant than those provided for in this Code .

They may not constitute a ground for terminating these contracts.

Any clause of an active contract which does not comply with the provisions of this Code, of a decree or an implementing order, shall be amended within six month after their publication.

In case of refusal of one party, the competent court may order, on pain of a fine, to proceed to the changes deemed necessary.

Art. 331.

The professional organisations of employers and workers approved as pursuant to the Labour Code attached to the Ordinance-Law 67-310 of 9 August 1967 shall be automatically registered in the minister in charge of labour and social welfare.

However, these organisations will have to make their Articles of association comply with the amended provisions of this Code within six months maximum as from its date of entry into force.

After this period, the defaulting organisations will be removed from the registry by order of the minister in charge of labour and social welfare.

Art. 332.

This code repeals and replaces all legislative provisions previously in force pertaining to labour.

Existing institutions, procedures and regulatory measures pursuant to the legislation and regulation in effect pertaining to labour which are not contrary to the provisions of this code shall remain in force.

Art. 333.

Decrees of the President of the Republic and orders of the Minister in charge of labour and social welfare, referred to in this Code, shall be taken within one year maximum as from its publication in the *"Official Journal"*.

Art . 334.

This Act comes into force on the date of its promulgation.