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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Second periodic reports submitted by States parties to the
Covenant, in accordance with Council resolution 1988 (LX),
concerning rights covered by articles 6-9

PHILIPPINES */

[17 October 1983]

*/ The initial report concerning rights covered by articles 6-9 of the Covenant submitted by the Government of the Philippines (E/1978/8/Add.4) was considered by the Sessional Working Group of Governmental Experts at its 1980 session (see E/1980/WG.1/SR.11).

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CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
ARTICLE 6: THE RIGHT TO WORK	1 - 61	3
A. Principal laws	4 - 10	4
B. Employment	11 - 55	5
C. Statistical and other available information	56 - 61	16
ARTICLE 7: THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK	62 - 107	17
A. Remuneration	62 - 78	17
B. Safe and healthy working conditions	79 - 93	22
C. Equal opportunity for promotion	94 - 97	25
D. Rest, leisure, limitation of working hours and holidays with pay	98 - 107	26
ARTICLE 8: TRADE UNION RIGHTS	108 - 128	30
A. Principal laws	108 - 115	30
B. Right to form and join trade unions	116	33
C. Right of trade unions to federate	117 - 119	34
D. Right of trade unions to function freely	120	38
E. Right to strike	121	38
F. Restrictions upon the exercise of trade union rights ..	122 - 124	40
G. Factors and difficulties affecting the degree of realization of trade union rights	125 - 128	41
ARTICLE 9: RIGHT TO SOCIAL SECURITY	129 - 163	42
A. Principal laws	129 - 131	42
B. Main features of the schemes in force	132 - 159	43
C. Factors and difficulties	160 - 163	50
List of annexes		52

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ARTICLE 6: THE RIGHT TO WORK

1. In recognition of this Article, the actions and measures taken by the Government of the Philippines are made within the context of the following developmental situations:

(a) The Philippines, typical of many Asian developing countries is a labour-surplus economy, and, as such, problems of unemployment and underemployment continue to affect the economy;

(b) As a result of recessionary trends in industrial and developed countries, the economies of developing countries such as the Philippines were deeply affected. Thus, growth decelerated and unemployment increased. The Philippines was able to weather the two rounds of oil price disturbances and subsequent global recessionary trends by maintaining a strong labour-absorbing industrial structure, creation of domestic livelihood opportunities, moderate population growth and taking advantage of overseas employment opportunities;

(c) In general, in a private enterprise the Government economy does not generally create employment opportunities except in the government employment sector. The primary role of the Government is in enunciating policies and undertaking programmes that will enhance the capability of the private sector to create employment and income-generating opportunities and thus promote full employment in the national economy.

2. Under the Five-Year Development Plan, 1978-1982, the economy moved forward despite difficulties in global environment, since domestic adversities also result from the increasing interdependence among countries. In spite of the difficulties encountered by the economy, the Government has been effective in meeting the increase in the demand for job opportunities of our growing labour force. This observation is supported by the fact that over the years the economy had generated jobs sufficient to keep unemployment at a relatively manageable level. The maintenance of industrial peace and expansion in domestic and overseas employment opportunities resulted in a manageable 5.1 per cent unemployment rate as of 1981.

3. The right to work is not absolute: it is obviously limited by the capability of the economy to provide adequate jobs for its citizenry. The problems of a developing economy are not often amenable to solutions open to developed economies. The measures or standards of achievement for the right to work should therefore recognize the fundamental differences in the overall resource bases of developing and developed countries and the principle that the level of development of an economy provides also the effective limits for its effective and efficient utilization of human resources. Moreover, the resources provided for such programmes would appear to be in lesser proportion, as other programmes, more basic to even simple survival of the people as well as the nation, would have higher priorities and require relatively a greater proportion or share in the expenditure of public funds.

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A. Principal laws, administrative regulations, collective agreements and court decisions designed to promote and safeguard the right to work as defined in this Article

4. The commitment of the Government to protect this right can be gleaned from the employment policies enunciated by the Government. These are embodied in the Philippine Constitution, the Labor Code and development plans of the country. The policy that the State shall pursue the promotion of employment and income-generating opportunities stems from the constitutional mandate as contained in section 9 of article 11, Declaration of Principles and State Policies. As provided, the State shall afford protection to labour, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed and regulate the relations between workers and employers. Moreover, the Labor Code of the Philippines reiterates this policy and puts into operation this constitutional mandate as provided for in article 12 of Book I on Pre-Employment.

5. For the plan period of 1983-1987, the development objectives for the employment sector are the following:

- (a) Limit the unemployment rate to a maximum of 4 per cent;
- (b) Reduce the present underemployment rate of 15-20 per cent;
- (c) Absorb the estimated 750,000 annual entrants to the labour force.

6. More specifically, it is estimated that the employment opportunities to be generated by the livelihood programme, small- and medium-scale industries expansion, skills training for certain groups, such as upland farmers, landless workers, and marginal settlers, will raise employment levels from 19.0 million in 1983 to 22.1 million in 1987 with an average annual growth rate of 3.9 per cent. Overseas employment, on the other hand, is expected to average 300,000 annually from 1983-1987. As a result, underemployment will be reduced, while the unemployment rate will be pegged to not more than 4 per cent.

7. In general, various policies exist to generate employment, enhance the quality of manpower, narrow the gap between labour supply and demand and enhance the competitiveness of labour.

8. The current employment thrust of the Government centres on the identification and reordering of priorities so that more job opportunities are created for the employable segment of the population. This is being implemented by way of statutory and administrative policies, to wit: (a) investment policies; (b) prices, income and wages policies; and (c) fiscal and monetary policies. Sectoral policies on industry, trade, agriculture, infrastructure, regional development, and education and manpower have also been enunciated to contribute to employment generation.

9. Although in general, Government in a private enterprise economy does not directly create employment opportunities, the Philippine Government has in a way substantially contributed to employment generation through specific programmes

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that create jobs and employment opportunities. These programmes are being implemented by the various ministries and government agencies such as the National Livelihood Program/Kilusan Kabuhayan at Kaunlaran (KKK) and the National Shelter Program of the Ministry of Human Settlements; the Overseas Employment Program, the National Employment Service Program, Social Amelioration and other employment promotion programmes of the Ministry of Labor and Employment; and the Self-Employment Assistance Program (SEAP) of the Ministry of Social Services and Development. Programmes such as the Kilusan Kabuhayan at Kaunlaran (KKK) and overseas employment helped in easing the unemployment and underemployment problems in the country. In 1982, a total of 197,779 jobs were created under the KKK programme and some 340,000 workers were employed abroad, an increase of 20 per cent over the 1981 level. Mention should also be made of the programmes of the Ministries of Natural Resources and Agriculture which have direct employment effects. The details of these policies and programmes are contained in annex A (see list of annexes, attached).

10. A comprehensive discussion on the measures taken and the progress made in achieving the observance of this right is contained in the report submitted to the International Labour Organisation (ILO) regarding our Government's compliance to the provisions of Convention 122: Employment Policy. The Philippines ratified this Convention in 1974. The report covered the period 1 July 1981 to 30 June 1982.

B. Employment

(1) The right of everyone to gain his living by work which he freely chooses or accepts, with particular reference to freedom from compulsion in the choice of employment and guarantees against discrimination in regard to access to employment

11. The 1981 Revised Constitution of the Philippines guarantees the right to every citizen to work with particular reference to freedom from compulsion in the choice of employment and guarantees against discrimination in regard to access to employment, pertinent provisions of which are quoted hereunder:

(a) Section 9. The State shall afford protection to labour, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between worker and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration. (Article II, Declaration of Principles and State Policies, Constitution)

(b) Section 14. No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted. (Article IV, Bill of Rights, Constitution)

12. The Labor Code of the Philippines as amended, guarantees against discrimination in regard to access to employment, specifically:

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Article 135. (Discrimination prohibited) "No employer shall discriminate against any woman with respect to terms and conditions of employment on account of her sex. Equal remuneration shall be paid to both men and women for work of equal value."

Article 136. (Stipulation against marriage) "It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage."

Article 137. (Prohibited acts) "(a) It shall be unlawful for any employer:

(1) to deny any woman employee the benefits provided for in this chapter or to discharge any woman employed by him for the purpose of preventing her from enjoying any of the benefits provided under this Code;

(2) to discharge such woman on account of her pregnancy, or while on leave or in confinement due to her pregnancy; or

(3) to discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant."

(2) Policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom of the individual

13. This can be best described by first stating the policy framework of the human resources development programme of the Government. Total human development is one of the major goals of development. It is considered both as a means and an end of all development efforts. This means that all resources and technology should be harnessed to assist every Filipino in meeting his needs. It entails the full development of every Filipino's body, mind and spirit. It also recognizes the role of public welfare, self-reliance, and community development in attaining these ends.

14. Total human development is both an objective and strategy of development. As an objective, total human development begins and ends with man. This means that social services (health, nutrition, education, housing) must be made accessible to enable people to engage in productive activities and nation-building. Economic growth must redound to the benefit of man, for his greater consumption for expanded social services and better amenities. Thus, total human development is the ultimate improvement in the quality of life of the population. It is the goal of all economic growth and all development efforts.

15. Recognizing that human resources constitute the chief and most important resource of the country, total human development as a strategy is the process by which people become active agents of their own development. It may proceed from a wide spectrum of approaches, from direct provision of services to community development with the people initiating active participation. A comprehensive and

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multisectoral approach is required in order to tap and harness this great human potential in the national, regional and local community development efforts.

16. The Government's commitment and action programme for the attainment of these goals are embodied in the Constitution, the Labor Code and various development plans. There is an existing public machinery that translates and makes these goals operational by means of specific action programmes and services. In fact, every agency of the Government performs either a direct or indirect role in the pursuit of human development. Annex B lists these policies and programmes on total human development.

17. For a more comprehensive discussion of these policies and techniques, reference may be made to items 5-6.5 of the Philippine Government's report for the period 1 July 1981 to 30 June 1982 to the ILO on the measures of Convention No. 122: Employment Policy.

(3) Measures to ensure the best possible organization of the employment market, with particular reference to manpower planning procedures, the collection and analysis of employment statistics and the organization of an employment service

Public employment service in the Philippines

18. Public employment service in the Philippines is now being undertaken by the Philippine Overseas Employment Administration, the Bureau of Local Employment, and the regional offices of the Ministry of Labor and Employment.

19. The Philippine Overseas Employment Administration (POEA) was created pursuant to Executive Order No. 799 to assume the functions of the Overseas Employment Development Board (OEDB), the National Seaman's Board (NSB) and the overseas employment functions of the Bureau of Employment Services (BES). It is responsible for formulating and undertaking, in co-ordination, where necessary, with the appropriate entities concerned, a systematic programme for promoting and monitoring the overseas employment of Filipino workers, taking into consideration domestic manpower requirements and also to protect the workers' rights to fair and equitable employment practices. The Administration has original and exclusive jurisdiction over all cases involving employer-employee relations, including money claims, which may arise out of or by virtue of any law or contract involving Filipino workers for overseas employment, including seamen. Its major functional areas are welfare services, placement and market development, and regulation.

20. The Administration has a three-man Board composed of the Minister as Chairman, the Administrator, and a third member who are all appointed by the President. The Administrator is assisted by two Deputy Administrators. Further assisting the Administration are two Advisory Boards, one concerned with overseas employment, and the other with seamen. Essentially a private sector participation, the Boards advise the Administration on overseas operations.

21. The Bureau of Local Employment (BLE) assumes the functions of the Bureau of Apprenticeship and the domestic functions of the Bureau of Employment Services. The Bureau aims at promoting and maintaining maximum utilization of productive

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manpower resources through the formulation and development of employment promotion policies and programmes, including the development and maintenance of a national apprenticeship/learnership programme. This objective is carried out through the regional offices of the Ministry of Labor and Employment. The Bureau has five divisions, namely: labour market information division, apprenticeship division, employment guidance and training division, local employment standards and regulation division, and local employment promotion and development division.

22. The 13 regional offices of the Ministry of Labor and Employment handle the employment service functions at the regional level, through their employment promotion divisions. Each division has three sections: labour market information, apprenticeship, and a public employment centre. The Bureau of Local Employment exercises technical supervision over all employment services undertaken by the regional offices, except the Manila Employment Office, which is under the direct control and supervision of the Bureau.

23. The Manila Employment Office (MEO), like the regional public employment centres, renders free local placement service to labour of all types. It provides: (a) job placement assistance; (b) guidance service, including career counselling with secondary schools, employment counselling for the youth, vocational counselling to prospective trainees and apprentices, and crisis counselling for other disadvantaged persons; (c) employment information assistance on current and future job opportunities to interested persons; and (d) occupational testing assistance which includes the administration, processing, and interpretation of aptitude and psychological tests, performance and oral trade tests, and interest inventories. The MEO also conducts seminar-workshops on life career development system, which includes five major areas of an individual's development - educational, employment, family, communal and recreational.

Labour market information system

24. The employment service programme is aimed at maximizing the development and utilization of the nation's human resources through a more organized employment market. Thus, our labour market information system is primarily designed to elicit and monitor labour market development in various parts of the country to meet information needs of policy and decision-makers. In the process, the following groups of clientele are also being served: (a) vocational counsellors and students; (b) programme planners on education and skills training; (c) placement officers of public employment offices and job seekers; and (d) personnel managers of private firms.

25. An important component of the labour market information system is the signalling system, which is a major core of the employment promotion and development functions of the Ministry of Labor and Employment. Through the system, data on labour market are monitored by the Bureau of Local Employment through the Ministry's 13 regional offices and the Manila Employment Office. These data are then utilized in the formulation of programmes and policies for the following employment promotion and development areas: career counselling; employment recruitment placement; manpower development; and job creation/generation.

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26. At present, the labour market information system of the Bureau is basically composed of data on labour turnover, industry and occupational events, and job vacancy occurrences. The outputs of the system include such information as (a) rate of labour turnover; (b) number of industries existing, industries to be set up, and industries to be shut down; and (c) hard-to-fill jobs and number of job vacancies.

27. The system consists of three administrative bodies: the Ministry's 13 regional offices; the Manila Employment Office; and the Labor Market Information Division of the Bureau of Local Employment.

28. The current programmes and projects of the Ministry of Labor and Employment relative to the Labor Market Information System are described below.

Publication of employment and labour turnover trends in selected industries

29. The objective of this project is to monitor, capture and relay trends on the employment situation through timely and regular information on labour turnover. The monitoring of labour turnover is significant to personnel managers, as the rates in different industries could be used to measure their own experience in their respective plants for use in job market analysis. The information on employment trends, moreover, are being used to guide the operations of the public employment offices and other agencies engaged in employment and manpower development, such as the Ministry of Education and Culture, Ministry of Human Settlements, the National Manpower and Youth Council, and the Ministry of Social Services Development, among others.

30. The project is designed to:

(a) Determine separations from employment in terms of quits, lay-offs, dismissals, retrenchments, and other reasons such as deaths, retirements and disabilities;

(b) Measure additions to employment in terms of expansion and replacements;

(c) Identify reasons for lay-offs, such as financial losses, lack of market or demand, shortage of materials, and other economic and non-economic business reversals;

(d) Determine such other developments through questionnaire riders as may be affecting the labour market situations.

31. Data for the project are derived from the employment reports submitted by establishments to the Ministry of Labor and Employment as required under the provisions of the Labor Code. The employment report covers four major types of information: number of employed during the period; number of job openings; accessions; and separation. It also covers information on the type of economic activity and location of the establishments.

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32. Respondents in this project were initially limited to large establishments employing 100 and more workers in selected industries in the metro-Manila area only. To strengthen the system, respondents, very recently, were increased to 38 industries and 2,152 establishments all over the country. The respondents were chosen based on their employment absorption/generating capacities and the vulnerabilities to domestic and international labour and economic imbalances.

33. The link-relative method is used in the estimation of data. Basic sources for the benchmark data are the 1981 National Census and Statistics Office (NCSO) Census of Establishments, supplemented by the fourth quarter (1982) and the first quarter (1983) listings of establishments gathered from the Quarterly Employment Reports.

Publication of job vacancy profile

34. Good occupational information is needed not only by prospective job seekers and industries but also by educational institutions. The information is needed by the latter to be able to set up proper counselling programmes and plan and establish new courses of study in consonance with the needs of the country. To industries, occupational information is indispensable in updating their training and job evaluation programmes.

35. The project consists of comprehensive description of job vacancies generated by industries in 10 selected labour areas throughout the country. Outputs are:

- (a) Occupational pattern of job vacancies generated by respondents in the selected areas;
- (b) Long-term vacancies that arise in these industries;
- (c) Causes of the occupational vacancies among these industries;
- (d) Volume of demand for each occupational vacancy generated by these industries.

36. The choice of industrial establishment groupings and occupational groupings was made on the basis of highlighting the trend of occupational demand and requirements among the more active groups of establishments.

Publication of an industry-employment analysis

37. The industry-employment analysis is designed to monitor movement in the industries and any changes in their respective employment. Data collated by the NCSO and the Labor Statistics Services (LSS) of the Ministry of Labor and Employment are tabulated to reflect establishments and employment by industry and province. The data are supplemented during the year by information on establishments shut down and proposed to be shut down, as well as industries recently opened and proposed to be opened gathered by the public employment offices throughout the country and the Labor Market Information Division of the Bureau of Local Employment.

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(4) Technical and vocational guidance and training programmes

38. Reference is made to the Philippine Government report to the ILO covering the period 1 July 1981 to 30 June 1982; in particular items 6.5 which relate to population and labour, education and training policies and 6.6 which discusses the measures to meet the needs of special categories of workers.

(5) Protection against arbitrary termination of employment

Constitutional basis

39. The constitutional basis against arbitrary termination of employment is embodied in article II, section 9, which provides:

"The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."

40. Implementing this constitutional mandate, Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, provides for the so-called clearance and report requirement, so that before an employer can terminate the employment of a worker, the former has to file a clearance with the Ministry of Labor and Employment. In most cases clearance is required, otherwise only a report is filed. The provision under an earlier presidential decree (No. 21) was that this clearance must first be filed with the MOLE within 10 days from the expected date of dismissal. The provision has been incorporated in P.D. 442, the implementing rules of which provide:

Section 1. "No employer may shut down his establishment or dismiss any of his employees with at least one year of service during the last two years, whether the service is broken or continuous, without prior clearance issued therefore in accordance with this Rule. Any provision in a collective agreement dispensing with the clearance requirement shall be null and void."

Section 2. "Any shut down or dismissal without prior clearance shall be conclusively presumed to be termination of employment without a just cause. The Regional Director shall, in such case, order the immediate reinstatement of the employee and the payment of his wages from the time of the shut down or dismissal until the time of reinstatement."

41. P.D. 442, with its implementing rules, was amended by Batas Pambansa Bilang 130, dated 31 May 1982. The amendment did away with the clearance and report and provided that before an employer can terminate the services of a worker, the former must notify said worker of the grounds of termination within 30 days from the expected date of termination. Within that period, the employee should be given the opportunity to meet the grounds of his termination and present evidence in his behalf. If the employer is not satisfied with the explanation of the

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worker, then he can terminate the services of the latter. However, the worker is not precluded from filing an action for illegal dismissal with the National Labor Relations Commission. Rule XIV of the implementing rules of Batas Pambansa Bilang 130 describes the procedural process for filing such action, as follows:

Rule XIV. Termination of employment

Section 1. (Security of tenure and due process) "No worker shall be dismissed except for a just or authorized cause provided by law and after due process."

Section 2. (Notice of dismissal) "Any employer who seeks to dismiss a worker shall furnish him a written notice stating the particular acts or omission constituting the grounds for his dismissal. In cases of abandonment of work, the notice shall be served at the worker's last known address."

Section 3. (Preventive suspension) "The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers."

Section 4. (Period of suspension) "No preventive suspension shall last longer than 30 days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker."

Section 5. (Answer and hearing) "The worker may answer the allegations stated against him in the notice of dismissal within a reasonable period from receipt of such notice. The employer shall afford the worker ample opportunity to be heard and to defend himself with the assistance of his representative, if he so desires."

Section 6. (Decision to dismiss) "The employer shall immediately notify a worker in writing of a decision to dismiss him stating clearly the reasons therefor."

Section 7. (Right to contest dismissal) "Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the Regional Branch of the Commission."

42. The security of tenure provision of the Labor Code has been amended by P.D. 850 (16 December 1975), thus:

Article 280. (Security of tenure) "In case of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed

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from work shall be entitled to reinstatement without loss of seniority rights and to payment of back wages computed from the time compensation was withheld from him up to the time of his reinstatement."

43. For protection against arbitrary termination of employment, the employer may terminate the employee only on grounds provided by law. These grounds are found in section 15 of Batas Pambansa Bilang 130, which amended articles 283 and 284 of the Labor Code:

Article 283. (Termination by employer) "An employer may terminate an employment for any of the following just causes:

"(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

"(b) Gross and habitual neglect by the employee of his duties;

"(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

"(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

"(e) Other causes analogous to the foregoing."

44. This provision shows that the law is definite about the grounds on which an employer may terminate an employment. These grounds are considered just causes.

45. Collective bargaining agreements also include provisions which protect the worker's rights to security of tenure in employment such as the following:

Article IV: Job security

Section 1. (Discipline) "The UNION recognizes the traditional rights of the BANK to dismiss, lay-off or otherwise discipline any employee for a just cause. However, the BANK agrees not to exercise this right arbitrarily. Before an employee may be dismissed, punished, or disciplined, he should be first notified of his alleged offense in writing, and the disciplinary action should be taken only after an investigation in which the employee concerned should be given a chance to explain his side verbally or in writing; pending such investigation, the BANK reserves the right to impose a preventive suspension on the employee concerned for a period the BANK deems necessary and in relation with implementing rules and regulations of the Ministry of Labor. The UNION shall have the right to appeal the case of the dismissed or disciplined employee as a grievance to be processed in accordance with the grievance clause set forth in this Agreement."

(Taken from a CBA between CITYTRUST BANKING CORPORATION and the CITYTRUST EMPLOYEES ORGANIZATION signed on the 15th of August 1979 and which will remain effective until August 14, 1982).

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46. The National Labor Relations Commission and the Supreme Court have decided cases on arbitrary dismissal of workers. These decisions have been made part of the judicial system.

Specific provisions

47. The Labor Code also contains the following specific provisions to protect workers against arbitrary termination of employment:

Article 135. (Discrimination prohibited) "No employer shall discriminate against any woman with respect to terms and conditions of employment on account of her sex. Equal remuneration shall be paid to both men and women for work of equal value."

Article 136. (Stipulation against marriage) "It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage."

Article 137. (Prohibited acts) "(a) It shall be unlawful for any employer:

- (1) to deny any woman employee the benefits provided for in this chapter or to discharge any woman employed by him for the purpose of preventing her from enjoying any of the benefits provided under this Code;
- (2) to discharge such woman on account of her pregnancy, or while on leave or in confinement due to her pregnancy; or
- (3) to discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant."

48. These measures, however, are applicable to men and women alike.

49. These provisions are being enforced. No violations have been reported as yet.

50. Despite the protective measures adopted by the Government, still there are complaints filed for illegal dismissals, although they were not specifically filed by women workers. The objective is not to totally eliminate arbitrary dismissals but to minimize its incidence.

(6) Protection against unemployment

51. Reference is made to the Philippine Government report to the ILO covering the period 1 July 1981 to 30 June 1982 on Convention No. 122: Employment Policy; in particular item 1 which describes the Government's policies, objectives and measures aimed to promote employment and/or lessen unemployment and underemployment in the country.

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52. Measures adopted specifically to protect women workers against unemployment are as follows:

(a) Articles 135-137 of the Labour Code, quoted above, apply to employed women;

(b) The National Commission on the Role of Filipino Women (NCRFW) was created in 1975 by virtue of P.D. 633 and attached to the Office of the President. It aims to achieve the integration of women as full and equal partners with men in the total development effort. It co-ordinates with all organizations in the Government and the private sector to promote the advancement of women in all levels of society. Two years after the NCRFW was organized, a nation-wide movement was launched pursuant to Presidential Proclamation No. 1609 to effectively involve women in the task of nation-building. The movement was called "Balikatan sa Kaunlaran" (BSK) which literally means "working together for progress" shoulder to shoulder in a synergized action towards national development. Its main objective is to fully integrate women, men and youth for economic, social and cultural development through co-ordination of Government and organized private efforts to maximize benefit for the people. The strategy was evolved to encourage women to become self-reliant and reach out with compassion and commitment to unity for national growth;

(c) The so-called Green Revolution is a government project to encourage the unemployed labour force to do some self-help activities by cultivating their backyards and planting vegetables. Another is the KKK (Kilusang Kabuhayan at Kaunlaran), the national livelihood programme. It is an integrated approach towards self-reliance through income-generating projects for the entire population.

53. Progress has been noted in lessening the unemployment rate among women. From a peak of 667,000 unemployed women in the second quarter of 1978 the number gradually decreased to 432,000 by the last quarter of the year.

54. For 1982, BSK councils implemented a total of 576 projects, as reported by 59 per cent of organizations and cities. One third (30.7 per cent) of these were addressed to the problem of employment. The economic problem was most felt in all regions, and the majority of the projects undertaken were geared towards income-generation or livelihood. Projects such as cottage industries, food production, including livestock, poultry and fish, scrap recycling as well as training for vocational productive skills were implemented.

55. There are, of course, difficulties encountered in implementing the measures against women unemployment. Among these are:

(a) Protective legislation for women which tend to work against their chances for employment;

(b) Job classification as traditionally "man's jobs" and "women's jobs";

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(c) Some misconceptions regarding women which are accepted as facts by some industrial firms and even government offices, such as that women are emotionally unstable in their work; that they are suited only for jobs at the low income level; that they are merely supplementary wage-earners; that men do not like to have women as their superiors; that employed married women neglect their homes and children; that women deprive men of their jobs; that the traditional attitude that a woman's place is in the home serving her husband and rearing her children; that most companies consider childbearing a setback because of the maternity leave it entails; that women obtain employment only until they get married, or if married, after their childbearing years;

(d) Lack of formal educational training/skills and lack of awareness of their basic rights under the Labor Code and other social legislations;

(e) Mismatch of jobs and skills.

C. Statistical and other available information on the level of employment and extent of unemployment and underemployment in the country; difficulties affecting the degree of realization of the right to work and progress achieved in this field

56. In the third quarter of 1982, the total labour force, which stood at 18,488 million, had recorded an annual growth rate of 3 per cent since 1977. Taken as a proportion of household population 15 years old and over, it makes up around 60 per cent of the manpower stock.

57. Some 3 million persons have been counted employed since 1977, bringing the country's work-force to 17,514 million in 1982. Over half of these employed persons were engaged in agricultural activities.

58. On the other hand, open unemployment remains at a minimum. Through the years, the unemployment rate has been no more than 6.3 per cent. Third quarter 1982 placed the unemployed at 5.3 per cent of the labour force or some 0.975 million persons. However, underemployment is still widespread. At 2,351 million underemployed, it cuts a substantial 12.7 per cent of the labour force. (Refer to annex C-1.)

59. The world-wide recession and its effects on the labour market may be gleaned from statistics on labour turnover rates. Experiencing negative turnover rates (difference of separation rate from accession rate) since 1980 on to 1982, selected industries in metro-Manila, on the average for the first quarter of 1983, showed slight recovery when the accession rate of 4.63 gained over separation rate of 4.01, after reaching the bottom negative 1.33 turnover rate in fourth quarter 1982. (Refer to annex C-2.)

60. Reference may be made to annex C-3 for other information on employment from the 1982 Philippine Development Report, as well as the Philippine Government report submitted to the ILO on Convention No. 122: Employment Policy.

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61. The difficulties affecting the degree of realization of the right to work and the progress achieved in this field are contained in item 7 of the Philippine Government's report to the ILO on Convention No. 122.

ARTICLE 7: THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

A. Remuneration

(1) Principal laws, administrative regulations, collective agreements and court decisions designed to promote and safeguard the right to fair remuneration in its various aspects as set out in article 7 (a)

62. The rights to fair remuneration may be found in the following documents which are hereunder stated:

(a) Social justice clause in the Constitution of the Philippines, providing that the promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State. (Sect. 6, Constitution of the Philippines.) In the case of Philippine Apparel Workers Union vs. NLRC and the Philippine Apparel Inc., G.R. No. 50320, 31 July 1981, the Supreme Court, inter alia, said:

"More than elusive justice, survival is the daily problem of the worker and his family. The employer is not faced with such a problem. More often that not, the employer dissipates part of his income or profit in pleasures of flesh and gambling aside from luxuries, fabulous parties and conspicuous consumption.

"The stability of the economy does not depend on the employer alone, but on government economic policies concerning productivity in all areas and not only in clothing or textile industries. There is not even an intention that the company is losing. It is the living wage of the workers which is the basis of stable economy. If the company cannot pay a living wage, it has no business operating at the expense of the lives of its workers from the very start.

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"To invoke the nebulous term 'stable economy' to justify rejection of the claims of the workers as against the assets of the employer is to regard human life as more expandable than corporate capital. There is nothing in the Constitution that expressly guarantees the viability of business enterprises much less assuring them of profits." [Underscoring supplied.]

In effect this was the gist of the opinions of the Court in other cases, such as that of Marcopper Mining vs. Hon. Blas F. Ople and Minister Amado Inciong and Marcopper Employees Labour Union, G.R. No. 51254, 11 June 1981, where it was ruled that "all employee monetary benefits provided in the CBA are in addition to, and may not be taken as substitute for the employee benefits granted by law, otherwise, there would be no reason for the execution of a CBA;

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(b) Protection to labour clause which provides that "the state shall afford protection to labour especially to working women and minors, and shall regulate the relations between land owner and tenant, and between labour and capital in industry and agriculture. The state shall provide compulsory arbitration". (Sect. 6, Constitution of the Philippines);

(c) The Labor Code of the Philippines, particularly Book III and Book IV from articles 82 to 210 are ample provision which are germane to just and favourable conditions of work;

(d) Household service shall always be reasonably compensated. Any stipulation that household service is without compensation shall be void. Such compensation shall be in addition to the househelper's lodging, food and medical attendance. (Art. 1689, New Civil Code of the Philippines);

(e) Article 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. (Civil Code of the Philippines.) This provision, known as unjust enrichment law, safeguards the right of workers to fair remuneration. An employer who profits from the labour of workers must pay the workers corresponding wages and other emoluments;

(f) A series of presidential decrees (P.D.) and wage orders have been issued concerning the increase of remuneration of workers. This measure is in line with the policy of the State to protect wages, incomes and employment against domestic inflation. The principal laws on the matter of increases of the daily minimum wage are enclosed. (see annex E);

(g) Aside from the laws that give protection to workers with respect to their remuneration, unions can bargain for their members for the improvement of salaries in case they are underpaid, and in some cases these workers are paid more than the law provides.

(2) Principal methods used for fixing wages (minimum wage-fixing machinery, collective bargaining, statutory regulations etc.) in the various sectors, and numbers of workers involved; information on the categories and numbers of workers for whom wages are not yet set by such methods

63. Presidential Decree 1790 grants the President stand-by powers to promptly fix wages and emergency cost of living allowance and fringe benefits of workers on national or regional levels whenever the Batasang Pambansa (legislative body) for some reason or another delays deliberation and passage of laws on wages etc.

64. There is a National Wages Council (NWC), created under Executive Order No. 614, a tripartite wage fixing body composed of representatives from labour, management and Government, which conducts continuing studies on economic and non-economic conditions of the country etc. On the basis of its studies the Council submits wage order recommendations to the Batasang Pambansa or the President to increase minimum wages, allowances and other related benefits, in order to take care of the living needs of workers in relation to viability of the business.

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65. At present the beneficiaries of minimum wage legislation are estimated to be about 14 per cent of the total labour force.

66. The principal methods used for fixing wages are as follows:

(a) Through tripartite conferences called for the fixing or establishing of a new minimum wage;

(b) Through legislation in the Parliament;

(c) Through time and motion studies at the initiative of either management or labour;

(d) Through wage studies and determination conducted by the National Wages Council, a tripartite body under the umbrella of the Ministry of Labor and Employment;

(e) Through negotiation with management as embodied in the collective bargaining agreement;

(f) Through individual contracts executed between management and labour.

(3) Information regarding components of workers' remuneration other than regular wages (such as bonuses, temporary cost of living differentials etc.)

67. The Annual Survey of Establishments is the major source of information on worker's remuneration. In this survey, worker's earnings is made up of direct wages and salaries; remuneration for time not worked; bonuses and gratuities; food, drink, fuel and other payments in kind and employers' contribution e.g. social security (remitted to GSIS or SSS), medicare and employment compensation (see annex E).

68. The basic components of the workers daily remuneration (legislated wage rates) as of 6 July 1983, are (in Philippine pesos):

(a) Non-agricultural workers in metro-Manila		<u>₱34.40</u>
Cost of living allowance	₱13.92	
Minimum wage	19.00	
13th-month pay	<u>01.58</u>	
(b) Non-agricultural wage outside metro-Manila		<u>₱33.32</u>
Cost of living allowance	₱13.82	
Minimum wage	18.00	
13th-month pay	<u>01.50</u>	

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(4) Statistical data showing the evolution of the levels of remuneration (covering, in particular, minimum wages and average earnings in a representative sample of occupation) and of the cost of living

69. As early as 1951, legislation of minimum wages was effected. It was only in 1974, though, that workers were benefited by a mandatory emergency cost of living allowance and, in 1975, by thirteenth-month pay.

70. From the P2-P4 basic minimum wage in 1951 (depending on economic activity) legislated wages in the country in 1982 ranged from ₱19.65 to ₱31.82. Basic minimum wages consist of from 55-71 per cent of the minimum remuneration. The rest is accounted by the cost of living allowance and thirteenth-month pay.

71. Wage Order No. 2, issued in July 1983, has raised the basic minimum wage to ₱15-₱19 (again depending on economic activity and location of establishment). Total effective monthly allowance has also been increased by ₱0.50-₱1.50, bringing the additional remuneration to ₱315-₱375 for non-agricultural workers and ₱240-₱280 for the agricultural sector. (see annex F)

72. Detailed statistical data on the evolution of the levels of legislated wages in the Philippines in money terms per day and in pesos per day are shown in annex F-1 and 2 (tables 1 and 2). Statistics on the evolution of the cost of emergency living allowances is shown in annex F-3. A brochure on minimum wages legislated in the Philippines is likewise included in annex F-4.

(5) Provisions and methods designed to ensure respect for the right to equal pay for work of equal value, and to ensure in particular that women are guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work

73. Provisions and methods designed to ensure respect for the right to equal pay for work of equal value are contained in general terms in the Declaration of Basic Policy, article 3 of P.D. 442, as amended, otherwise known as the Labor Code. The Code implements the constitutional policy of protection to labour provided in section 6 of the Philippine Constitution.

74. The Labor Code contains provisions aimed at ensuring that women are guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work. These provisions are (see annex D):

Article 130: Night work prohibition

Article 132: Facilities for women

Article 135: Discrimination prohibited

Article 137: Prohibited acts

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(6) Difficulties encountered and progress made in extending to all workers measures designed to ensure that they receive fair remuneration providing a decent living for themselves and their families in accordance with the provisions of the Covenant

75. To ensure that workers receive fair remuneration providing a decent living for themselves and their families, article 28 (Visitorial and enforcement powers) of the Labor Code provides as follows:

"(a) The Secretary of Labor or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and to investigate any fact, condition or matters which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

"(b) The Minister of Labor or his duly authorized representatives shall have the power to order and administer, after due notice and hearing, compliance with the labor standards provisions of this Code based on the findings of labor regulation offices or industrial safety engineers made in the course of inspection, and to issue writs of execution to the appropriate authority for the enforcement of their order, except in cases where the employer contests the findings of the labor regulation officer and raises issues which cannot be resolved without considering evidentiary matters that are not verifiable in the normal course of inspection.

"(c) The Secretary of Labor may likewise order stoppage of work or suspension of operations of any unit or department of an establishment when non-compliance with the law or implementing rules and regulations poses grave and imminent danger to the health and safety of workers in the workplace. Within twenty-four hours, a hearing shall be conducted to determine whether an order for the stoppage of work or suspension of operations shall be lifted or not. In case the violation is attributable to the fault of the employer, he shall pay the employees concerned their salaries or wages during the period of such stoppage of work or suspension of operation.

"(d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor or his duly authorized representatives issued pursuant to the authority granted under this Article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over the case involving the enforcement orders issued in accordance with this Article."

76. Articles 102 to 119 of the Labor Code are also intended to ensure that workers receive fair remuneration.

77. Progress made in the area of wages include adjustments either in the form of upgraded basic minimum wage, cost of living allowances or thirteenth-month pay have

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been legislated in the last 10 years, covering both male and female workers. Money wages in 1982 increased four times from the 1972 levels in both non-agricultural and agricultural sectors. The increases are from ₱8.00 in 1972 to ₱31.82 in 1982 for non-agricultural workers in metro-Manila and ₱30.74 outside metro-Manila; and from ₱4.75 to ₱26.18 for plantation workers and ₱19.65 for non-plantation groups of the agricultural sector. However, because of world-wide inflation, increases in the legislated wages were rather modest compared to the 1972 levels - from ₱8.00 to ₱8.90 in the non-agricultural sector and from ₱4.75 to ₱6.99 in the agricultural sector.

78. Difficulties are encountered in extending to all workers the measures intended to bring about fair remuneration. These are:

(a) Capability and willingness of employers to comply with wage orders standards prescribed by law;

(b) Willingness of workers themselves to receive wages below the standards prescribed by law due to poverty, fear of dismissal;

(c) Problem of unemployment and underemployment.

B. Safe and healthy working conditions

(1) Principal laws, administrative regulations, collective agreements and court decisions designed to promote and safeguard the right to safe and healthy working conditions, generally and in particular sectors or occupations

79. Promotion and safeguarding of the workers' rights to safe and healthy working conditions are contained in the provisions of Article 162 and Article 163 of the Labor Code as follows:

Article 162 (Safety and health standards) "The Secretary of Labor shall, by appropriate orders, set and enforce mandatory occupational safety and health standards to eliminate or reduce occupational safety and health hazards in all workplaces and institute new, and update existing programs to ensure safe and healthful working conditions in all places of employment."

Article 163 (Research) "It shall be the responsibility of the Department of Labor to conduct continuing studies and research to develop innovative methods, techniques and approaches for dealing with occupational safety and health problems; to discover latent diseases by establishing casual connections between diseases and working environmental conditions; and to develop medical criteria which will assure insofar as practicable that no employee will suffer impairment or diminution in health, functional capacity, or life expectancy as a result of his work and working conditions."

80. Other pertinent laws are contained in the Labor Code of the Philippines, as amended, Book IV, Titles I, II, III and IV on medical, dental and occupational safety, the Employees' Compensation Commission and the State Insurance Fund, Medicare and other benefits.

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81. The Occupational Safety and Health Standards, a set of codified safety and health orders formulated to meet the needs of Filipino workers, has likewise been promulgated to reinforce the mandate of article 162 of the Labor Code.

82. Memoranda of Agreement have been entered into by the Ministry of Labor and Employment with some ministries with regard to particular sectors or occupations, as follows:

Memorandum of Agreement between the Department of Labor (now the Ministry of Labor and Employment) and the Department of Health (now Ministry of Health), signed 28 October 1975. This memorandum contained guidelines delineating the jurisdictional areas of responsibility of these two agencies with regard to the implementation of the Labor Code of the Philippines (P.D. 442 on health and safety) and Executive Order No. 34, Series of 1966, implementing Republic Act No. 3814 on dental health services.

Memorandum of Agreement between the Ministry of Labor (now the Ministry of Labor and Employment) and the Ministry of Health, executed on 19 February 1980. This agreement was entered into to harmonize the implementation of the Labor Code of the Philippines (P.D. 442) and the Sanitation Code of the Philippines (P.D. 856 on the programming and enforcement of occupational health and safety and the training of occupational health and safety personnel for labour, management and the general public).

Memorandum of Agreement between the Ministry of Labor (now the Ministry of Labor and Employment) and the Ministry of Public Works (now the Ministry of Public Works and Highways). This agreement was entered into on 15 April 1980 for effective and co-ordinated implementation of the Labor Code of the Philippines (P.D. 442, as amended) and the National Building Code of the Philippines (P.D. 1096) defining the areas of responsibility between these Ministries regarding the construction or repair of structures to be used for factories, whose purpose is to assure the construction workers' safety.

(2) Principal arrangements and procedures including inspection services and various bodies at the national, industry, local or undertaking level entrusted with the promotion or supervision of health and safety at work to ensure that these provisions are effectively respected in individual workplaces.

83. Labour inspection is being done by a number of units which are specialized, but which are answerable and responsible to a central authority - the Ministry of Labor and Employment (MOLE).

84. The Bureau of Working Conditions of the Ministry of Labor and Employment is in charge of setting and enforcing mandatory occupational safety and health standards in all workplaces. It is also charged with instituting new programmes or updating existing programmes to ensure safe and healthful working conditions in all places of employment.

85. The Regional Offices of the Ministry of Labor and Employment with 13 regions throughout the country, together with their district offices and units, are

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responsible for the direct implementation of policies, programmes and projects of the Ministry in their respective geographical jurisdictions.

86. Supplementing the Ministry's efforts in its task of implementing and supervising labour standards laws are two other ministries, namely the Ministry of Health (MOH) and the Ministry of Public Works (MPW). As per provision of the Memorandum of Agreement entered into by the two Ministries, they shall co-operate closely in the implementation of the provisions of the Labor Code of the Philippines (P.D. 442) and Sanitation Code (P.D. 856) on health and safety. The memorandum of agreement between the MOLE and MPW provides for a more effective co-ordination in implementing safety standards on buildings such as power and electrical lights, as provided for both in the Labor Code of the Philippines and the National Building Code, being enforced by the Ministry of Public Works.

87. These Ministries have been delegated the authority to conduct technical safety inspection to chartered cities in workplaces within their respective jurisdictions.

88. Article 128(c) of the Labor Code, empowers the Minister of Labor and Employment to order stoppage of work or suspension of operations of any unit or department of an establishment when non-compliance with the law or implementing rules and regulations poses grave and imminent danger to the health and safety of workers in the workplace.

(3) Information on any categories of workers or sectors for which measures designed to ensure safe and healthy working conditions have not yet been fully implemented, and on any progress made in extending this right to the worker concerned

89. The Occupational Safety and Health Standards was designed to ensure every workman in all places of employment safe and healthy working conditions as mandated in the Labor Code. This does not cover establishments engaged in land, sea and air transportation, as well as the activities of a lessee regarding the safety of mining installations, surface or underground, within the mining claim or lease, including mine safety, mineral conservation and problems of pollution in establishments or workplaces falling under "Mining Industry" as classified by the NEDA. The Ministry of Transportation and the Ministry of Natural Resources have jurisdiction over the above-mentioned exceptions. Workers in coal mines are protected and covered by the laws and regulations of the Ministry of Energy.

(4) Statistical and other information concerning the number, nature and frequency of occupational accidents and cases of occupational diseases

90. The total number of occupational accidents in 1982 is 5,901. These consisted of 33 fatal, 4,216 non-fatal, and 842 medical treatment injuries. The nature of these injuries are broken down as follows:

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Lacerations, cuts, punctures	2 823
Contusions, bruises, haematoma	1 112
Burns, scalds	276
Sprains, strains	231
Fractures	136
Crushing injuries	121
Occupational/Industrial diseases	82
Amputation	22
Electrocution, electric shock	11
Asphyxiation, poisoning	4
Hernia	1
Not elsewhere classified	252
Unknown	20

91. In 1982, the employees compensation claims on employment-related injuries, including medical services and rehabilitation, increased to 107,456 from 96,438 in 1981. Claims paid in connection with medical services constituted the bulk at a little less than 50 per cent of total, followed closely by temporary total disability, with a proportionate share of 41 per cent. There were 4,025 (4 per cent) work-related death claims and 6,037 (6 per cent) permanent disabilities, whether partial or total.

92. Claims charged against the State Insurance Fund (SIF) increased by fourfold since the SIF's inception in 1975 - a tremendous rise considering the twofold growth noted during the periods 1964 to 1974 and 1954 to 1964.

93. In a separate set of data covering 4,000 disabling injuries, frequency and severity rates reached 14.24 and 746 respectively in 1982, slightly worse than 1981's 12.26 and 647 figures respectively. Highest frequency rate was noted in commerce and services at 38.2; followed by agriculture at 18.1 and manufacturing, 16.2. Mining and quarrying recorded the highest severity rate at 3,413, seconded by construction at 903.

C. Equal opportunity for promotion

(1) Principal laws, administrative regulations, collective agreements and court decisions designed to further and safeguard equality of opportunity for promotion in employment

94. The Civil Service Law (P.D. 807) is the principal law which safeguards equality of opportunity for promotion in employment in the public sector. For those in the private sector, collective bargaining agreements provide for the worker's right to equal opportunity for promotion.

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(2) Principal arrangements and procedures to implement this right in the public and private sectors, including training programmes, placement policies, promotion procedures, career planning and the extent of the participation of the workers' representatives in such arrangements

95. In the public sector, principal arrangements and procedures to safeguard equality of opportunity for promotion in employment are contained in rule V of the Rules of Personnel Actions and Policies promulgated by the Civil Service Commission pursuant to the provisions of P.D. 807. A copy of said rules is appended to this report (annex G).

96. Collective bargaining agreements provide for the arrangements and procedures to implement this right for workers in the private sector.

(3) Factors and difficulties affecting the degree of realization of this right and progress achieved

97. Studies show that this right has been fully safeguarded and notable progress has been achieved.

D. Rest, leisure, limitation of working hours and holidays with pay

(1) Principal laws, administrative regulations, collective agreement and court decisions designed to promote and safeguard the rights to rest, leisure, reasonable limitation of working hours, and periodic holidays with pay

98. These rights of the workers in the private sector and in the government service are safeguarded under the Labor Code and the Civil Service Law. Collective bargaining agreements also provide for promoting and safeguarding these rights.

(2) Information on the position, in law and practice in the various sectors of activity as regards: (a) weekly rest; (b) normal hours of work and overtime; (c) holidays with pay; (d) remuneration for public holidays

99. The Labor Code contains provisions relating to the above-mentioned conditions of employment, as follows:

Weekly rest

Article 91 (Right to weekly rest day).

"(a) It shall be the duty of every employer whether operating for profit or not, to provide each of his employees a rest period of not less than twenty-four (24) consecutive hours after every six (6) consecutive normal work days.

"(b) The employer shall determine and schedule the weekly rest day of his employees subject to collective bargaining agreement and to such rules and regulations as the Secretary of Labor may provide. However, the employer shall respect the preference of employees as to their weekly rest day when such preference is based on religious grounds."

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Article 92 (When employer may require work on a rest day). "The employer may require his employees to work on any day:

"(a) In case of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity to prevent loss of life and property, or imminent danger to public safety;

"(b) In cases of urgent work to be performed on the machinery, equipment, or installation, to avoid serious loss which the employer would otherwise suffer;

"(c) In the event of abnormal pressure of work due to special circumstances, where the employer cannot ordinarily be expected to resort to other measures;

"(d) To prevent loss or damage to perishable goods;

"(e) Where the nature of the work requires continuous operations and the stoppage of work may result in irreparable injury or loss to the employer; and

"(f) Under other circumstances analogous or similar to the foregoing as determined by the Secretary of Labor."

Article 93 (Compensation for rest day, Sunday or holiday work).

"(a) Where an employee is made or permitted to work on his scheduled rest day, he shall be paid an additional compensation of at least thirty per cent (30%) of his regular wage. An employee shall be entitled to such additional compensation for work performed on Sunday only when it is his established rest day.

"(b) When the nature of the work of the employee is such that he has no regular work days and no regular rest days can be scheduled he shall be paid an additional compensation of at least thirty per cent (30%) of his regular wage for work performed on Sundays and holidays.

"(c) Work performed on any special holiday shall be paid an additional compensation of at least thirty per cent (30%) of the regular wage of the employee. Where such holiday work falls on the employee's scheduled rest day, he shall be entitled to an additional compensation of at least fifty per cent (50%) of his regular wage.

"(d) Where the collective bargaining agreement or other applicable employment contract stipulates the payment of a higher premium pay than that prescribed under this Article, the employer shall pay such higher rate."

Normal hours of work

Article 83 (Normal hours of work). "The normal hours of work of any employee shall not exceed eight (8) hours a day.

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"Health personnel in cities and municipalities with a population of at least one million (1,000,000) or in hospitals and clinics with a bed capacity of at least one hundred (100) shall hold regular office hours for eight (8) hours a day, for five (5) days a week, or a total of forty (40) hours a week, exclusive of time for meals, except where the exigencies of the service require that such personnel work for six (6) days or forty-eight (48) hours, in which case they shall be entitled to an additional compensation of at least thirty per cent (30%) of their regular wage for work on the sixth day. For purposes of this Article, 'health personnel' shall include: resident physicians, nurses, nutritionists, dietitians, pharmacists, social workers, laboratory technicians, paramedical technicians, psychologists, midwives, attendants and all other hospitals or clinic personnel."

100. In the government service, the 40-hours a week work is observed.

Article 87 (Overtime work). "Work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime to his regular wage plus at least twenty-five (25%) per cent thereof. Work performed beyond eight hours on a holiday or rest day shall be paid an additional compensation equivalent to the rate of the first eight hours on a holiday or rest day plus at least thirty per cent hereof."

Article 88 (Undertime not offset by overtime). "Undertime work on any particular day shall not be offset by overtime work on any other day. Permission given to the employee to go on leave on some other day of the week shall not exempt the employer from paying the additional compensation required in this Chapter."

Article 89 (Emergency overtime work). "Any employee may be required by the employer to perform overtime work in any of the following cases:

"(a) When the country is at war or when any other national or local emergency has been declared by the National Assembly or the Chief Executive;

"(b) When it is necessary to prevent loss of life or property or in case of imminent danger to public safety due to an actual or impending emergency in the locality caused by serious accidents, fire, flood, typhoon, earthquake, epidemic, or other disaster or calamity;

"(c) When there is urgent work to be performed on machines, installations or equipment, in order to avoid serious loss or damage to the employer or some other cause of similar nature;

"(d) When the work is necessary to prevent loss or damage to perishable goods; and

"(e) Where the completion or continuation of the work stated before the eighth hour is necessary to prevent serious obstruction or prejudice to the business or operations of the employer.

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"Any employee required to render overtime work under this Article shall be paid the additional compensation required in this Chapter."

Holidays with pay

Article 94 (Right to holiday pay).

"(a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten (10) workers;

"(b) The employer may require an employee to work on any holiday but such employee shall be paid a compensation equivalent to twice his regular rate; and

"(c) As used in this Article, 'holiday' includes: New Year's Day, Maundy Thursday, Good Friday, the ninth of April, the first of May, the twelfth of June, the fourth of July, the thirtieth of November, the twenty-fifth and the thirtieth of December, and the day designated by law for holding a general election."

Article 95 (Right to service incentive leave).

"(a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

"(b) This provision shall not apply to those who are already enjoying the benefit herein provided, those employing vacation leave with pay of at least five days and those employed in establishments regularly employing less than ten employees or in establishments exempted from granting this benefit by the Secretary of Labor after considering the viability or financial condition of such establishment.

"(c) The grant of benefit in excess of that provided herein shall not be made a subject of arbitration or any court of administrative action."

Remuneration for public holidays

101. Article 94, above, covers this subject-matter.

102. Implementation of these provisions are subject to rules and regulations issued by the Ministry of Labor and Employment and to other voluntary company practice or policy on collective agreements.

103. Some CBA's provide for more benefits than that provided in the Code.

(3) Principal arrangements and procedures to implement these rights in the various sectors, including industries and services where work is organized on a continuous basis, such as health care, the police etc.

104. Article 128 of the Labor Code, as earlier quoted, empowers the Ministry of Labor and Employment or his duly authorized representatives to enforce the provisions relating to these rights.

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105. The Ministry of Labor and Employment, through the regional offices, supervises and regulates the effective applications of this provision. Organizations of employers and workers are regularly consulted on any matters specially in the formulation and application of laws and policies relating to conditions of employment.

(4) Factors and difficulties affecting the degree of realization of these rights and progress achieved

106. Since these are mandatory rights, a majority of the workers enjoy the same, principally because they are basic and fundamental rights of the working man.

107. However, since the Philippines is a developing country with an over-supply of manpower resources and still in the process of attracting foreign investors to ease unemployment, it is not yet in the position to amend its present laws to conform with the provisions of the International Labor Organisation Convention on holidays with pay (see 1982 report to ILO on Convention 132).

ARTICLE 8. TRADE UNION RIGHTS

A. Principal laws, administrative regulations, collective agreements and court decisions designed to promote and safeguard trade union rights

108. The following laws and administrative regulations deal with the promotion and regulation of trade union rights in the Philippines:

(a) Article II, Section 9 of the 1973 Constitution, which specifically provides that:

"The state shall afford protection to labor, promote full employment, ensure equal work opportunity regardless of sex, race, or creed, and shall regulate the relations between workers and employers. The state shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The state may provide for compulsory arbitration";

(b) Articles 234-278 of Book V of the Labor Code of the Philippines, which are the basic statutory provisions in respect of labour organizations. These provisions cover such aspects as union registration and cancellation, collective bargaining, unfair labour practices and strikes and lockouts;

(c) Rules II-XII of the Rules and Regulations Implementing Book V of the Labor Code on labour organizations. These rules clarify the statutory provisions and lay down procedural guidelines to effect implementation of the legislation;

(d) Batas Pambansa Bilang 70, which amends certain sections of the Labor Code as to provide that ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labour

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organizations for the purpose of enhancing and defending their interests and for their mutual aid and protection. The law further provides that the non-abridgement of the right to self-organization includes the right to form, join or assist labour organizations for the purpose of collective bargaining through representatives of their own choosing, and to engage in lawful concerted activities for the same purpose or for their mutual aid and protection. Batas Pambansa Bilang 70 also declares that unfair labour practices are not only violations of the civil rights of both labour and management, but are also criminal offenses against the State which shall be subject to prosecution and punishment;

(e) Batas Pambansa Bilang 130, which introduces a new Labor Relations Law. Significant features brought about by the passage of this law include:

- (i) Elimination of the certification requirement for collective agreement;
- (ii) Reduction of membership requirement for union registration;
- (iii) Elimination of clearance requirement for dismissals at the initiative of the employers;
- (iv) Introduction of the concept of labour-management committee;
- (v) Streamlining dispute settlement by expanding the jurisdiction of the grievance machinery;
- (vi) Restoration of the right to strike and lockout, providing rules for observance thereof;
- (f) Rules and Regulations Implementing Batas Pambansa Bilang 130;

(g) Batas Pambansa Bilang 227, or the Anti-Scab and Picketing Law. This law defines the scope of lawful picketing and regulates the hiring of scabs or replacements for workers in cases of strikes. Also, Batas Pambansa Bilang 227 provides the sanctions with which the demonstrated violence and illegal acts at picket lines can be prevented or stopped;

(h) Rules and Regulations Implementing Batas Pambansa Bilang 227.

109. Recent judicial pronouncements touching on trade union rights are enunciated in the cases described below.

Free Telephone Workers Union vs. The Minister of Labor and Employment
(October 1981)

110. In this case, the Supreme Court held that Batas Pambansa Bilang 130, in so far as it empowers the Minister of Labor to assume jurisdiction over labour disputes causing or likely to cause strikes or lockouts adversely affecting the national interest, and thereafter decide it, or certify the same to the National Labor Relations Commission, is not in its face unconstitutional for being violative of the doctrine on non-delegation of legislative power. Batas Pambansa Bilang 130 has

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clearly prescribed the standard within which the Minister may validly exercise his authority, such being limited to "strike or lockouts adversely affecting the national interests".

Eastland C. vs. Noriel (February, 1982)

111. The lack of the required 30 per cent vote of employees in a petition for certification election is not of itself a bar to an order for such election by the Bureau of Labor Relations Director, provided there is no abuse of discretion.

People's Industrial and Commercial Employees and Worker's Organization et. al. vs. People's Industrial and Commercial Corporation et. al. (March, 1982)

112. The question to be resolved is whether or not the petitioner's act of disaffiliating themselves from the mother federation constitutes an act of disloyalty to the union which would warrant their expulsion and consequently their dismissal from the company in pursuance of the union security clause embodied in the collective bargaining agreement. There is no merit to the contention that the act of disaffiliation is disloyalty to the union. The federation and the union are two different entities, notwithstanding the fact that it was the federation which negotiated the collective agreement for and on behalf of the employees, for which reason it actively initiated the dismissal of the individual petitioners. A local union does not owe its existence to the federation to which it is affiliated. It is a separate and distinct voluntary association owing its creation and continued existence to the will of its members. The very essence of self-organization is for the workers to form a group for the effective enhancement and protection of their common interests. By so disaffiliating themselves, therefore, the employees cannot be covered by the union security clause embodied in the CBA, and thus cannot be dismissed from employment.

Free Telephone Worker's Union vs. Philippine Long Distance Telephone Company (April, 1982)

113. Peaceful picketing cannot be restrained because the same is part of the freedom of speech. Orders prohibiting picketing must be understood to refer only to picketing through the use of illegal means.

To the same effect is the decision in Philippine Commercial and Industrial Bank vs. Philnabank Employees Association (105 SCRA 314).

National Federation of Sugar Workers (NFSW vs. Ovejera et. al. (May, 1982)

114. Upon failure of the company to comply with the Union's demand for bonus payments pursuant to an earlier compromise agreement, NFSW filed a notice of strike. Six days after, they went on strike, and the next day, a report of the strike vote was filed. Labour Arbiter Ovejera declared the strike illegal because of failure on the part of the union to observe the 15-day period and the filing of strike notice required by Batas Pambansa Bilang 130 are mandatory. Non-compliance with these requirements render strike illegal. In requiring a strike notice and cooling-off period, the intent of the law is to provide an opportunity for

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mediation and conciliation. So, too, the 7-day strike vote. Its submission gives assurance that the strike vote has been taken and if the report concerning it is false, the majority of the members can take appropriate remedy before it is too late.

Pepsi-Cola Labor Union vs. National Labor Relations Commission and Pepsi-Cola, Naga City (June, 1982)

115. A certification election was held in the Pepsi plant in Naga, where the petitioner garnered 128 votes out of 131, with the losing labour union contesting the election. In the meantime, the petitioner-union filed a notice of strike, claiming Pepsi refused to bargain. Pepsi countered that it was willing to, but that there was as yet no final decision on the appeal of the other labour union. When the petitioner-union actually struck, Pepsi filed a complaint of unfair labour practice and illegal strike which the National Labor Relations Commission upheld. On review, the Supreme Court held that, although the strike was indeed illegal, it could not discount the presence of good faith on the part of the rank and file union members, since the union had obtained 128 out of 131 votes, so as to be justifiably considered their sole bargaining representative. There is no proof that all the union members participated in the strike. The ones who deserve punishment are the officers of the union who staged the strike in defiance of the orders of the med-arbiter. Hence, the petition must be granted, and the company should reinstate all the persons mentioned in the Labor Arbiter's decision under the same terms and conditions of employment except for the officers of the union.

B. Right to form and join trade unions

116. The following provisions in the Labour Code govern the right of workers to join and form trade unions of their own choice:

Article 211 (Statement of objectives). It is the policy of the State:

"To promote free trade unionism as an agent of democracy, social justice and development."

Article 244 (Coverage and employees' right to self-organization).

"All persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical or educational institutions, whether operating for profit or not, shall have the right to self-organization and to form, join or assist labour organizations of their own choosing for purposes of collective bargaining. Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labour organizations for the purpose of enhancing and defending their interests and for their mutual aid and protection."

Article 247 (Non-abridgement of the right to self-organization).

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"It shall be unlawful for any person to restrain, coerce, discriminate against or unduly interfere with employees and workers in their exercise of the right to form, join, or assist labor organizations for the purpose of collective bargaining through representatives of their own choosing and to engage in lawful concerted activities for the same purpose or for their mutual aid and protection."

C. Right of trade unions to federate

117. The following laws and implementing rules govern the right to join national federations, and the right of the latter to form and join international trade union organizations:

Article 211, Labor Code (Statement of objectives). It is the policy of the State:

"To rationalize and restructure the labor movement in order to eradicate inter-union and intra-unions conflicts."

Article 238, Labor Code (Conditions for registration of federations or national unions).

"No federations or national union shall be registered to engage in any organizational activity in more than one industry in any area or region, and no federation or national union shall be registered to engage in any organizational activity in more than one industry all over the country.

"The federation or national union which meets the requirements and conditions herein prescribed may organize the affiliate locals and chapters without registering such locals or chapters with the Bureau.

"Locals or chapters shall have the same rights and privileges as if they were registered in the Bureau, provided that such federation or national union organizes such locals or chapters within its assigned organizational field of activity as may be prescribed by the Minister of Labor.

"The Bureau of Labor Relations (BLR) shall see to it that federations and national unions shall only organize locals and chapters within a specific industry or region."

Article 241, Labor Code (Equity of the incumbent).

"All existing federations and national unions which meet the qualifications of a legitimate labour organization and show none of the grounds for cancellation, shall continue to maintain their existing affiliates regardless of the nature of the industry and the location of the affiliates.

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"Incumbent affiliates of existing federations or national unions may disaffiliate only for the purpose of joining a federation or national union in the industry or region in which it properly belongs or for the purpose of operating as an independent labour group."

118. The implementing rules of the Labor Code provide as follows:

(a) Rule III

Section 1 (Industry grouping). Upon consultation with workers' and employers' representatives and subject to the approval of the Secretary of Labor, the Bureau of Labor Relations shall divide the economy into appropriate and viable industry groups, each of which may in turn be divided into appropriate and viable subgroups as circumstances and policy may require.

Section 3 (Restructuring and unification convention; representation and voting rights). There shall be only one Restructuring and Unification Convention (RUC) in every industry group or subgroup. In such a restructuring and unification convention, all collective bargaining agents shall have one representative for every 100 workers it represents but every collective bargaining agent shall have at least one representative regardless of its size.

Voting shall be based on the number of dues-paying members of participating collective bargaining agents duly accredited. Collective bargaining agents in every industry group or subgroup may be represented by proxy provided said proxy is duly authorized in writing under oath by the collective bargaining agent concerned in accordance with its constitution and by-laws.

Section 4 (Union affiliation: direct membership with National Union). An affiliate of a labour federation or national union may be a local or chapter thereof or an independently registered union.

(1) The labour federation or national union concerned shall issue a charter certificate indicating the creation or establishment of a local or charter, a copy of which shall be submitted to the Bureau of Labor Relations within 30 days from issuance of such charter certificate.

(2) An independently registered union shall be considered as affiliate of a labour federation or national union after submission to the Bureau of the contract or agreement of affiliation within thirty (30) days after its execution.

(3) All existing labour federations or national unions are required to submit a list of all their affiliates, with their addresses and including the names and addresses of their respective officials, to the Bureau within thirty (30) days from effective date of these rules.

(4) All existing labour federations or national unions with direct members are required to organize said members into locals or chapters in their respective companies or establishments within sixty (60) days from effective date of these rules.

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(5) The local or chapter of a labour federation or national union shall have and maintain a constitution and by-laws, set of officers and books of accounts. For reporting purposes, the procedure governing the reporting of independently registered unions, federations or national unions shall be observed.

(6) No person who is not an employee or worker of the company or establishment where an independently registered union, affiliate, local or chapter of a labour federation or national union operates shall henceforth be elected or appointed as an officer of such union, affiliate, local or chapter.

(b) Rule IV

Section 1 (Affiliation with industry/sub-industry union: membership in federation). All legitimate locals, chapters, and other affiliates of pre-restructuring labour federations, or national unions which are recognized collective bargaining agents within an industry or sub-industry must join the duly certified industry or sub-industry union but may remain members of the federations or national unions to which they are presently affiliated.

Section 2 (Limitation on organization). Pre-restructuring labour federations or national unions shall immediately cease and desist from organizing or affiliating locals or chapters in an industry union or sub-industry union which has been duly certified and registered by the Bureau.

Section 3 (Options). Locals, chapters and other affiliates of a pre-restructuring labour federation or national union, which have existing collective agreements, shall have the following options:

(a) To stay with the national union or labour federation and at the same time join the industry or sub-industry union and be members of both;

(b) To disaffiliate from the national union or labour federation and join the industry or sub-industry union duly registered in the industry group or subgroup to which they appropriately belong even before the expiration of their collective agreements.

Foreign activities

118a. Articles 270 and 271 of the Labor Code provide as follows:

Article 270 (Prohibition against aliens).

"All aliens, natural or juridical, as well as all foreign organizations are strictly prohibited from engaging directly or indirectly in all forms of trade union activities without prejudice to normal contracts between Philippine trade unions and recognized international labor centers."

Article 271 (Regulation of foreign assistance).

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"(a) No foreign individual, organization or entity may give any donations, grants or other forms of assistance, in cash or in kind, directly or indirectly, to any labour organizations, group of workers or any auxiliary thereof, such as co-operatives, credit unions and institutions engaged in research, education or communication in relation to trade union activities, without prior permission by the Secretary of Labor.

'Trade union activities' shall mean:

- (1) Organization, formation and administration of labour organizations;
- (2) Negotiation and administration of collective bargaining agreements;
- (3) All forms of concerted union actions;
- (4) Organizing, managing, or assisting union conventions, meetings, rallies, referenda, teach-ins, seminars, conferences and Institutes;
- (5) Any form of participation or involvement in representation proceedings, representation elections, consent elections, union elections; and
- (6) Other activities or actions analogous to the foregoing.

"(b) This prohibition shall equally apply to foreign donations, grants or other forms of assistance, in cash or in kind, given directly or indirectly to any employer or employers' organization to support any activity or activities affecting trade unions.

"(c) The Secretary of Labor shall promulgate rules and regulations to regulate and control the giving and receiving of such donations, grants, or other forms of assistance, including the mandatory reporting of the amounts of the donations or grants, the specific recipients thereof, the projects or activities proposed to be supported, and their duration".

119. The Rules and regulations implementing the provisions on foreign activities provide as follows:

Section 10 (Continuity of normal contacts with International Labor Centers). Duly registered labour organizations may affiliate or maintain fraternal or other forms of relations, not contrary to law or to the objectives of the Decree, as amended, with recognized international labour centres, including, but not limited to, the International Confederation of Free Trade Unions (ICFTU), the World Confederation of Labor (WCL), the World Federation of Trade Unions (WFTU), the International Confederation of Free Trade Unions-Asian Regional Office (ICFTU-ARO), the Brotherhood of Asian Trade Unionists (BATU), established international trade secretariats, and other friendly foreign labour organizations.

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Such labour organizations shall submit to the Bureau of Labor Relations a quarterly report on their activities in relation to their affiliation, or fraternal or other forms of relations with such entities. The Bureau of Labor Relations shall prepare appropriate reporting forms for the purpose.

D. Right of trade unions to function freely

120. No text.

E. Right to strike

121. The right to strike and lockout, including the corresponding restrictions on the exercise thereof, are embodied in Batas Pambansa Bilang 130 and 227, which amended certain articles in the Labor Code. The following provisions are pertinent:

"Article 264. (Strikes, picketing, and lockouts).

"(a) It is the policy of the State to encourage free trade unionism and free collective bargaining;

"(b) Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labor organizations to strikes and picket and of employers to lockout, consistent with the national interest, shall continue to be recognized and respected. However, no labor union may strike and no employer may declare a lockout on grounds involving inter-union and intra-union disputes;

"(c) In cases of bargaining deadlocks, the certified or duly recognized bargaining representative may file a notice of strike or the employer may file a notice of lockout with the Ministry at least thirty (30) days before the intended date thereof. In cases of unfair labor practices, the period of notice shall be shortened to fifteen (15) days; and in the absence of a duly certified or recognized bargaining representatives, the notice of strike may be filed by any legitimate labor organization in behalf of its members;

"(d) The notice must be in accordance with such implementing rules and regulations as the Minister of Labor and Employment may promulgate;

"(e) During the cooling-off period, it shall be the duty of the Ministry to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout;

"(f) A decision to declare a strike must be approved by at least two-thirds (2/3) of the total union membership in the bargaining unit concerned obtained by secret ballot in meetings or referenda. A decision to

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declare a lockout must be approved by at least two-thirds (2/3) of the board of directors of the employer corporation or association or of the partners in a partnership obtained by secret ballot in a meeting called for the purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Ministry may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Ministry the results of the voting at least seven (7) days before the intended strike or lockout, subject to the cooling-off period herein provided;

"(g) When in his opinion there exists a labor dispute causing or likely to cause strikes or lockouts adversely affecting the national interest, such as may occur in but not limited to public utilities, companies engaged in the generation or distribution of energy, banks, hospitals, and export-oriented industries including those within export processing zones, the Ministry of Labor and Employment shall assume jurisdiction over the dispute and decide it or certify the same to the National Labor Relations Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumptions or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Minister may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same;

"The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries where in his opinion labor disputes may adversely affect the national interest, and from intervening at any time and assuming jurisdiction over any labor dispute adversely affecting the national interest in order to settle or terminate the same."

"(h) Before or at any stage of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration;

"(i) The Minister of Labor and Employment, the Commission or the voluntary arbitrator shall decide or resolve the dispute within thirty (30) working days from the date of assumption of jurisdiction or the certification or submission of the dispute, as the case may be. The decision of the Minister, the Commission or the voluntary arbitrator shall be final and immediately executory."

"Article 265 (Prohibited activities).

"(a) No labor organization or employer shall declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the Ministry.

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"No strike or lockout shall be declared after assumption of jurisdiction by the President or the Minister or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout.

"Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full back wages. Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment rights: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike;

"(b) No person shall obstruct, impede or interfere with by force, violence, coercion, threats or intimidation any peaceful picketing by employees during any labor controversy or in the exercise of the right of self-organization or collective bargaining, or shall aid or abet such obstruction or interference;

"(c) No employer shall use or employ any strike breaker, nor shall any person be employed as a strike breaker;

"(d) No public official or employee, including officers and personnel of the Armed Forces of the Philippines or the Integrated National Police, or armed person shall bring in, introduce or escort in any manner any person who seeks to replace strikers in entering and/or leaving the premises of a strike area or to work in place of the strikers: Provided, That nothing herein shall be interpreted to prevent any public officer from taking any measure necessary to maintain peace and order and/or protect life and property;

"(e) No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares."

F. Restrictions upon the exercise of trade union rights

1. On the right to form and join trade unions

122. The following provisions are deemed to be restrictions on the right to form and join trade unions:

Article 243 (Ineligibility of security personnel to join any labor organization). Security guards and other personnel employed for the protection and security of the person, properties and premises of the employer shall not be eligible for membership in any labor organization.

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Article 246 (Ineligibility of managerial employees to join any labor organization). Managerial employees are not eligible to join, assist or form any labour organization.

Article 277 (Government employees). The terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations, shall be governed by the Civil Service Law, rules and regulations. Their salaries shall be standardized by the National Assembly as provided for in the New Constitution. However, there shall be no reduction of existing wages, benefits and other terms and conditions of employment being enjoyed by them at the time of the adoption of the Code.

2. On the right of trade unions to federate

123. Restrictions on the right of trade unions to federate and affiliate with international organizations are incorporated in section C above.

3. On the right to strike

124. Restrictions on the right to strike are incorporated in paragraph 1 of the present section.

G. Factors and difficulties affecting the degree of realization of trade union rights

125. According to statistics reported by the Ministry, only 10 per cent of the entire labour force is organized. Several factors have been shown as affecting the rapid growth of unionization. These are as follows:

(a) High levels of unemployment discourage memberships in unions, especially those in their formative stage. The adverse attitude of management towards labour, and vice versa, leads employers to oppose unions, and they would prefer to have no unions in their establishments and be relieved of organized demands for increased wages, better working conditions etc;

(b) Internal weaknesses of the trade union movement contribute to the low rate of unionization. The failure of most unions to provide for a substantial number of benefits to union members leads to indifference on the part of the workers to join unions. Another weakness characterizing trade unions is their tendency to "pirate" members of other unions. Aside from fomenting greater inter-union rivalries, this practice defeats the primary purpose of organizing a larger percentage of the unorganized labour force;

(c) Inadequate dissemination of information on workers' rights and obligations, and the advantages of collective action is still another factor which affects the formation of unions.

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126. In order to encourage the growth of trade unions the Philippine Government has adopted the policy of promoting the growth of strong and responsible labour organizations. Steps taken in this direction include the reduction of the membership requirement for union registration from 50 per cent to a minimum of 30 per cent of all the members in the bargaining unit. Also, recent amendments to the Labor Code, specifically on coverage of the right to self-organization, have extended the same to almost all types of workers. The only exceptions are security personnel, managerial employees, and employees of the State. The creation of the Trade Union Congress of the Philippines (TUCP) has served to unify a great number of the existing trade unions in the Philippines. Lately, encouragement has also been given in the areas of labour education and research to apprise workers of the benefits obtainable in the exercise of their right to self-organization.

127. With respect to the right to strike, difficulties in the realization of this right are found in the laws regulating the exercise thereof. The imposition of such requirements as the mandatory cooling-off period and the filing of strike notice, especially as regards strikes resulting from unfair labour practices are looked upon by the organized sector as a virtual curtailment of the right to strike. The strike law is further subject to this condition - that the industry must not be one affecting the national interest. Thus, workers may file a notice of strike and observe the cooling-off period, but such is no assurance that they may actually strike, as there is still the "national interest" clause to contend with.

128. Notwithstanding these conditions, it may be said that the right to strike, and to engage in other legitimate concerted activities, exists in the Philippines. However, the basic thrust of Philippine labour relations policies is directed towards a conciliatory approach to labour disputes, and strikes are viewed as acts of last resort. As such the Government has encouraged conciliation as a mode of dispute settlement, as well as voluntary arbitration. This is evident from a provision in the strike law which allows conciliation during the cooling-off period and during the pendency of the strike.

ARTICLE 9: RIGHT TO SOCIAL SECURITY

A. Principal laws, administrative regulations, collective agreements, court decisions and other types of arrangements relating to the social security system including social insurance schemes

129. Article 7, section 7 of the Constitution states the policy towards protecting the right to social security in which the State shall establish, maintain and ensure adequate medical services in the field of education, health, housing, employment welfare and social security to guarantee the enjoyment by the people of a decent standard of living.

130. The Government implements this policy through four welfare programmes which are administered by public agencies, namely:

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Social Security Program for private employment under Republic Act 1161, as amended, and administered by the Social Security System (SSS)

Retirement and insurance programme for public employment, instituted under C.A. 186, as amended, and administered by the Government Service Insurance System (GSIS) under the regulatory authority of the GSIS Board of Trustees

Employees' Compensation Program instituted by the two systems through P.D. 626 (see annex I) under the Employees Compensation Commission

The Medicare (Medical Care) Program, instituted under Republic Act (R.A.) 6111 as amended by P.D. 1519, operates under two different programmes. Program I covers all employees who are members of SSS and GSIS. Program II covers all types of workers not covered by GSIS (see annex J, J-1, J-2). Articles 166-210 of the Labor Code contain the principal laws on the Employees Compensation and State Insurance Fund, medicare and other benefits

131. A parliamentary bill (No. 1522), an Act revising P.D. 1519 by integrating the administration of the National Health Insurance Fund of the Philippine Medical Care programme, is being recommended for approval to the Batasang Pambansa by the Subcommittee on Medical Care of the Committee on Health.

B. Main features of the schemes in force for each of the branches of social security listed below, indicating in particular, for each branch, the percentage of the population covered, the nature and level of benefits, and the method of financing the scheme

1. Medical care
2. Cash sickness benefits
3. Maternity benefits
4. Invalidity benefits
5. Old-age benefits
6. Survivors' benefit
7. Employment injury benefits
8. Unemployment benefits
9. Family benefits

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1. Medical care

132. The Medical Care Program of the Philippines consists of two programmes:

(a) Program I covers all employees and their legal dependants compulsorily covered under R.A. 1161 and Commonwealth Act 186 or the charters of the Social Security System and the Government Service Insurance System, respectively; self-employed persons who registered under P.D. 1636, which placed them under the coverage of the Social Security System; and Filipino civilian employees in American bases in the Philippines. Under Program I, the SSS administers the Medicare Plan for all its members and their dependants, while GSIS administers Medicare in favour of government employees including their dependants;

(b) Program II covers all those not covered under Program I. These persons will be given medical care by existing government hospitals, rural health units and other government clinics, but contributions will not be collected from them until after actuarial studies are completed to determine the amount of contributions necessary to ensure adequate financing.

133. Availability of Medicare benefits requires only:

(a) At least 3-months contributions within a 12-month period prior to confinement;

(b) Confinement in a hospital due to injury or sickness;

(c) A PMCC Form I.

134. Benefits derived in 1979 under Program I for sickness or injury requiring surgical operation are:

(a) Allowance for hospital room and board at ₱12/day for a period not exceeding 45 days/year for each member of Program I and another 45 days/year to be shared by all his legal dependants. The Commission may fix a higher rate not exceeding ₱18/day;

(b) Allowance for drugs necessary for laboratory examination including X-ray not exceeding ₱150/single period of confinement or not exceeding ₱250 for cases requiring intensive care;

(c) Surgeon's fees allowance not exceeding ₱50 for minor surgery, ₱250 for medium surgery and ₱500 for major surgery. The fee shall cover two days of pre-operative care and five days of post-operative care;

(d) Operating room fee allowance not exceeding ₱20 for minor surgery, ₱50 for medium and ₱75 for major;

(e) Anaesthesiologist's fee which shall not exceed 30 per cent of surgeon's fee;

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(f) Allowance for medical and dental practitioner's fee of ₱10 each for daily visit not to exceed ₱200 for a single period of confinement;

(g) Allowance for sterilization expenses of a contributing member or spouse.

135. Under Program I the benefits are provided, either through a social insurance medical care service similar to that of Program I, or through the public medical care service under rules and regulations promulgated by the Commission.

136. These medical care benefits and all other benefits except employment injury benefits are financed by the SSS and GSIS Health Insurance Fund through employers' and employees' contributions remitted to the system on a monthly salary credit schedule; and contributions of self-employed persons and of the Government in the form of yearly appropriations.

2. Cash sickness benefits

137. This benefit, and all other benefits, shall be made available by the SSS to both employers and employees in the private sector. The covered employers are those persons, natural or juridical, domestic or foreign, who carry on in the Philippines, any trade, business industry, undertaking or activity of any kind and use the services of other persons who are under their orders as regards employment. The covered employees are those who perform services for an employer in which mental and/or physical efforts are used and who receive compensation for such services. A self-employed professional shall be considered both an employee and employer at the same time.

138. Employment excluded from coverage are:

(a) Agricultural labour when performed by a share or leasehold tenant or worker who is not paid any regular daily wage basic pay and who does not work for an uninterrupted period of at least six months in a year;

(b) Domestic service in a private home;

(c) Employment purely casual and for the purpose of occupation or business of the employee;

(d) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 years in the employ of his parents;

(e) Service performed on or in connection with an alien vessel by an employee if he is employed when such vessel is outside the Philippines;

(f) Service performed in the employ of the Philippine Government or instrumentality or agency thereof;

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(g) Service performed in the employ of a foreign Government or international organization or their wholly owned instrument; provided that they are not precluded from entering into an agreement with the Philippine Government for the inclusion of such employees in the SSS, except those already covered by their respective civil service retirement systems;

(h) Such other services performed by temporary employees which may be excluded by regulation of the Commission.

139. The cash sickness benefit under SSS covers medical services, appliances and supplies, such as the nature of the disability and the progress of recovery may require. The payment should be made directly to providers of such services in such amounts as are prevailing in the community.

140. Cash sickness benefit is made available by the GSIS to the membership of the system which consists of all permanent employees below 60 years of age upon approval by the President of the Philippines, subject to the availability of funds. Compulsory coverage may be extended to non-permanent employees of national government agencies and local government.

141. The sickness income benefit given is for non-work-connected sickness or injury resulting in temporary or total disability, and the member shall be entitled to 65 per cent of his current daily compensation for each day or a fraction thereof, but not exceeding 60 days in one calendar year after exhausting all his leave credits and not earlier than the fourth day of his sickness or injury.

3. Maternity benefits

142. Both SSS and GSIS provide this benefit to its members in the Government and private sector.

4. Invalidity benefits

143. Invalidity benefits for SSS cover:

Permanent total disability benefit. The employee is entitled to this income benefit, if it has been duly reported to the system that he has sustained permanent, total disability as a result of injury or sickness and that the system has been duly notified of the injury or sickness which caused his disability. The employee shall be paid a monthly income computed at 115 per cent of the sum of the benefit and the graduated increment. The full monthly income benefit shall be paid for all compensable months of disability, but not longer than five years;

Permanent partial disability benefit. The employee entitled to this benefit shall be paid a monthly income benefit which is equivalent to 115 per cent of the sum of the basic benefit and the graduated increment; but the monthly income benefit shall not be less than the minimum of the SSS nor more than the monthly salary credit.

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144. For GSIS, invalidity benefits cover:

Permanent disability benefits. This benefit is available to a member who has paid at least 36 monthly contributions within the five-year period immediately preceding the disability, or at least 180 monthly contributions. This benefit is available only if it is not compensated under any other law.

If a member becomes permanently disabled before he is qualified for old-age pension, but is entitled to permanent disability benefits, he shall receive the basic monthly pension for life if the disability is total. If partial, the pension shall be based on the rules and regulations of the GSIS.

5. Old-age benefits

145. Old-age benefits, in the form of retirement benefits for the private sector, are made available by the SSS either as a monthly pension or in lump sum. For one to be entitled to a monthly pension, the covered employee should have paid at least 120 monthly contributions prior to the semester of his retirement. For the lump sum retirement benefit qualification, the member covered should be 60 years old at retirement and should not qualify under pension benefits. He should also be separated from employment and not continue payment of contributions to the SSS.

146. Retirement benefits for the government sector is available in two ways, first, by monthly old-age pension and second, by optional retirement. Old-age pension is paid to a member who has at least 15 years of service in the Government, is at least 60 years old and is separated from the service. That person shall receive the basic monthly pension for life but in no case for less than five years.

147. Unless the service of the member is extended, retirement shall be compulsory for an employee at 65 years with at least 15 years of service, provided that if he has less than 15 years of service, he shall be allowed to continue in the service to complete the 15 years.

148. Optional retirement gives an option to covered employees in the government service, upon the effectivity of Republic Act 4968 to either retire under this Act or under C.A. 186.

6. Survivors' benefit

149. Upon the death of a covered member of the SSS, a funeral grant shall be paid to help defray the cost of funeral expenses. His primary beneficiaries shall also be entitled to the monthly pension, provided that he has at least 36 monthly paid contributions prior to the semester of his death.

150. For GSIS members, the System shall pay ₱1,000 upon the death of a member or pensioner to the family to help defray funeral expenses. The primary beneficiary of a decedent member shall be entitled to a survivorship pension of 50 per cent of the basic monthly pension. This pension shall be guaranteed for five years or may opt a lump sum benefit.

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7. Employment injury benefits

151. Coverage of the State Insurance Fund shall be compulsory upon all employers and their employees who are not over 60 years of age; provided, that an employee who is over 60 years of age and paying contributions to qualify for retirement or life insurance benefit, administered by the System prior to age 60, shall be likewise covered if not compulsorily retired.

152. The term "employee" under this coverage provision means any person compulsorily covered by the GSIS under C.A. 186, including members of the AFP, and by any person employed as casual, emergency, temporary, substitute or contractual; or any person compulsorily covered by the SSS under R.A. 1161, as amended.

153. The term "employer", on the other hand, is used under this provision to mean any person, natural or judicial, employing the services of the employee.

Benefits under the programme

154. The benefits being offered by the Employees' Compensation Program are available only in case of work connected injuries. Failure of the claimant to prove this prerequisite precludes him from availing himself of these benefits.

Medical services. Immediately after an employee contracts sickness or sustains an injury, he shall be provided by the EC Program, during the subsequent period of his disability with such medical services as injury and progress of his recovery may require, subject to the expense limitation prescribed by the Commission.

All fees and other charges for hospital services, medical care and appliances, excluding professional fees, shall not be higher than those prevailing in wards of hospitals for similar services to injured or sick persons.

Rehabilitation services. The EC System shall establish a continuing programme for the rehabilitation of injured and handicapped employees who shall be entitled to rehabilitation services, which shall consist of medical, surgical or hospital treatment, including appliances if he has been handicapped by the injury. The System shall also establish centres equipped and staffed to provide a balanced programme of remedial treatment.

Temporary total disability. If an employee sustains an injury or contracts sickness resulting in temporary total disability, the System shall for the day of such disability or fraction thereof, be paid an income benefit equivalent to daily salary credit. However, the employee shall not be entitled to avail himself of the income benefits under this entitlement and his sick leave credits at the same time. All sick leaves earned by him shall be preserved to his credit if he has not been paid his salary during such leave of absence.

Permanent total disability. The System grants to any employee who contracts sickness or sustains an injury resulting in permanent total disability, shall, for each month until his death, be paid an amount equivalent to the monthly

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income benefit, plus 10 per cent thereof for each dependent child, but not exceeding five, beginning with the youngest, and no substitution of dependants is allowed.

The monthly income benefit shall be guaranteed for five years and shall be suspended if the employee is gainfully employed or recovers from his permanent total disability or fails to present himself for examination at least once a year upon notice by the System.

The following shall be deemed total and permanent disability:

- (a) Temporary disability lasting continuously for 120 days;
- (b) Complete loss of sight of both eyes;
- (c) Loss of two limbs at or above ankle or wrists;
- (d) Permanent paralysis of two limbs;
- (e) Brain injury resulting in incurable imbecility or insanity;
- (f) Such cases are as determined by the Medical Director of the System and approved by the Commission.

Permanent partial disability. An employee who contracts sickness or sustains an injury resulting in permanent partial disability, shall, for each month not exceeding the period designated, be paid an income benefit equivalent to the income benefit for permanent total disability.

Death benefits. The System shall pay the primary beneficiaries upon the death of the covered employee an amount equivalent to his monthly income benefit, plus 10 per cent thereof for each dependent child, but not exceeding five. If he has no primary beneficiary, the System shall pay to his secondary beneficiaries a lump sum benefit equivalent to the lesser of 35 times the monthly income benefit.

155. For 1983, average benefit payments made by the Systems, according to type of benefit are as follows:

SSS Payments: For temporary total disability, P307; for medical services, P349; for permanent disability, P3,418; for death/funeral, P10,072, and for rehabilitation benefits, P712.

GSIS Payments: An average of P1,646 for temporary total disability, P2,711 for permanent total disability, P4,309 for permanent partial disability, P10,557 for death benefits, P690 for medical services and P913 for rehabilitation benefits. Average GSIS pension payment was estimated at P542.

156. Benefits are financed through the contributions under the Employees' Compensation Program, paid in its entirety by the employer, and any contract or

device for the deduction of any portion thereof from the wages or salaries of the employees shall be null and void. The employer shall remit to the System 1 per cent of the employee's monthly salary credit.

157. Upon death, disability or separation of employment by the employee, the employer's obligation to pay the contribution shall cease at the end of the month of the contingency and during those succeeding months when the employee is already separated from the employment.

158. Another benefit available to GSIS members is the life insurance benefit which appears in two forms: compulsory life insurance and optional life insurance. The first form is available for those employed after the enactment of this Act; for those whose insurance matured, but was not renewed prior to RA 4968, because their insurance shall be deemed renewed on the day of the effectivity of the said Act; for those whose insurance will mature or expire after this Act because their insurance shall be deemed renewed on the day following the maturity or expiry of previous insurance; and for those without any life insurance.

159. The optional life insurance is subject to the rules and regulations of the System. The member may at any time apply for this kind of insurance for himself or his dependants and the payment of the premium may be made by the insured or his employer or any person acceptable by the System.

C. Factors and difficulties affecting the degree of realization of the right to social security; progress achieved, as regards, in particular the covering of new fields of society security, the extension of existing schemes to further groups of the population and improvements in the nature or level of benefits

160. Difficulties affecting the degree of realization of this right are:

(a) In spite of the wider scope of benefits provided in the Philippine Social Security System as compared to other developing countries, a substantial percentage of the Philippine work-force are unaided and unprotected. These include rural workers engaged in small farm holdings, domestic servants in private homes, and casual and contractual, as well as temporary workers who are left uncovered by the Social Security System;

(b) Medical care provisions, particularly hospitalization benefits, prove to be insufficient to meet the actual needs of the workers:

(i) Hospitalization benefits cover only those of ward services cases. Should there be expenses higher than the standards set up by the Medical Care Commission, the balance is paid by the beneficiaries. A large discrepancy exists between the provided rates and the actual prevailing rates in hospitals;

(ii) Whereas the Medicare Program of the Philippines was intended by its framers and lawmakers to be for those under Program II, notably the

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low-income non-employee who belong to the portion of the labour sector who needs health insurance most but cannot afford to buy insurance, the absence of an administrative mechanism, such as that existing for the employee sector, resulted in Program I for the employee being used to provide "anchorage" to Program II;

- (iii) In 1979, the Philippine Medicare Commission found that the supportive value of Medicare went down to 30 per cent only, owing to recession and inflation, whereas it was paying 70 per cent of the total hospitalization costs at the start of the Program in 1972;

(c) The Employees Compensation Commission pays the hospitalization bills directly to the hospital after the worker has proven that the case is indeed work-connected. If such is not proven, the worker satisfies himself with a lower rate of benefit offered by either SSS or GSIS. Most of the time, the worker chooses the SSS or GSIS benefit than go through the long process of proving his accident as work-connected. The worker is thus precluded from claiming his ECC benefits because he has already chosen the SSS or GSIS package;

(d) The pensions benefit does not adapt its benefit to changes in the value of money, and thus does not fulfil its purpose.

161. To date, the proposal of the Medicare Commission to return the supportive value to the 1972 rate of at least 70 per cent became Parliamentary Bill 1522 and is with the Batasang Pambansa, the legislative area of the Philippine Government.

162. There are objections from the Social Security System, the Government Service Insurance System and the employers regarding the proposed increase in wage ceiling covered from ₱600.00 to ₱1,000.00.

163. A draft of a proposed bill (not yet officially released), allegedly drawn up by a Committee including SSS, GSIS and NEDA, has proposed the disintegration of the Medicare programme into three programmes, each programme to be separately and independently run by SSS, GSIS and the Medicare Commission, respectively.

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ANNEXES

The following reference material was submitted by the Government of the Philippines annexed to the present report. It is available for consultation in the files of the Secretariat.

- Annex A Policies and programs affecting employment
 - B Policies and programs on total human development
 - C-1 Current labor statistics (as of 27 July 1983)
 - C-2 Current labor statistics on labor rates in selected industries in metro-Manila (as of 27 July 1983)
 - C-3 "Employment" from 1982 Philippine Development Report
 - D Labor Code of the Philippines with amendments
 - D-1 Presidential decrees on minimum wage increases
 - D-2 Presidential Decree No. 1751 and implementing rules
 - D-3 Rules implementing Presidential Decree No. 1713
 - E Checklist submitted to ILO on questionnaire on Labour Code
 - F Wage order No. 2
 - F-1 Legislated wages in the Philippines (in money-terms/day) 1951-1982
 - F-2 Minimum wages in the Philippines (in pesos/day) 1976-1983
 - F-3 Illustrative breakdown of cost-of-living allowance
 - F-4 Minimum wages and allowances legislated in the Philippines
 - G Implementing rules on Promotion P.D. 807
 - H Samples of collective bargaining agreements between employers and employees
 - I Presidential Decree No. 626
 - J Republic Act No. 6111
 - J-1 Revised Philippine Medical Care Act (P.D. No. 1519)
 - J-2 Revised rules and regulations of the Medicare Program
 - K Subcommittee Report No. 2 re Parliamentary Bill No. 1522
