審查各機關對結論性意見與建議的初步回應第 5 次會議

補充資料

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法務部 2 樓簡報室

目　　錄

6 月 13 日

「審查各機關對結論性意見與建議的初步回應會議」

台灣勞工陣線協會書面建議

團體名稱：台灣勞工陣線協會

一、 結論性意見

38. 一個重大關切的議題是移工權利的被濫用和欠缺，這發生在例如人員招募，主要涉及過高的仲介費用、對於雇主幾近完全依賴、轉換雇主的限制、有證勞工失去其身分，以及成為無證勞工後伴隨而來的驅逐出境風險等方面。家務勞工是所有移工中最脆弱的，面臨過長的工時、低工資，以及易遭受性騷擾。**同時也值得關注的是包括家務勞工在內的移工，並沒有被基本的勞動保護法規所涵蓋在內，例如勞動基準法及勞工安全衛生法。**更有甚者，一個嚴重的問題是，即使是依國際人權標準應賦予每個人的最基本權利，尤其包括食物權、住房權和健康照護權，無證勞工卻無法獲得確保。

39. 因此專家們建議：1.基本的勞動保護法規，例如勞動基準法和勞工安全衛生法應該涵蓋移工、家務勞工和派遣工；2.外勞招募仲介商的剝削行為必須受到更嚴密的控制，虐待情形必須予以處罰；3.移工轉換雇主的權利必須被擴大；4. 包括國民與非國民，有證或無證者在內，應保證人人得享最基本的人權，特別是食物權、住宅權和健康照護權；5.將外勞基本工資與中華民國(臺灣)公民基本工資脫鉤的提案應予拒絕，因為與聯合國及國際勞工組織標準有違。

二、 書面回應

目前台灣共有 44 萬外勞，產業外勞的 24 萬人，由於營造業、製造業屬於勞基法適用對象，因此產業外勞薪資明訂不得低於法定基本工資。但約 20 萬從事家事服務外勞，由於個人家事服務業不納入勞基法，因此該產業外勞薪資由勞資雙方的契約自行約定，早就低於勞基法的最低工資標準。無論是產業外勞或社福外勞，外勞與本勞「同工不同酬」，以及勞動條件不受保障，已經成為我國侵害

勞動人權的最直接證據。

勞委會以家事勞工，因工作時間與休息時間不易釐清等因素，適用勞動基準法有窒礙難行之處。研訂擬具「家事勞工保障法」草案，內容雖包含明定休息時間、休假、基本工資等部分，但就工作總時數並無明確規範，一般適用勞基法勞工縱使適用變形工時，仍有雙週 84 小時上限，「家事勞工保障法」並無法解決家事勞工工時過長與休息權遭剝奪等現象。

三、 建議

*勞動基準法是規定勞動條件之最低標準，為檢視一國勞動政策之重要指標，理應一體適用所有的勞雇關係，以使全國勞動條件維持一定水準。勞基法雖曾修法擴大適用，但至今仍未全面適用，致使勞工權益嚴重受到侵害。**因此建議勞基法應一體適用各類型受僱關係勞工，縱使制定「家事勞工保障法」，仍應以勞基法為最低標準**。

*「勞工安全衛生法」自民國 80 年全文修正後，至今已超過 20 年，期間僅 91 年進行小幅的修正，條文內容許多皆未能與時並進，造成勞工在職場上的安全衛生保障未能完善，而隨著產業型態的轉變，自營作業者與派遣勞工等皆未受到保障，使得該法適用對象僅有 670 萬人，修法早已刻不容緩。而該法的三讀修正，卻歷經兩次受阻：於第七屆立法院最後一個會期（2011 年 12 月）預定三讀時，因六輕條款而遭國民黨團及無黨聯盟提出覆議，送回朝野協商，因屆期不連續而功敗垂成。第八屆修法捲土重來，經多次朝野協商總算達成協商共識，竟又在三讀前遭變更議程，而未順利完成三讀。此次立法院臨時會應立即完成三讀程序，以確保勞工安全與促進職業災害之預防！

*在「配額制」的管理機制下的外籍勞工，不僅限制了轉換雇主的機會，更是造成他們受到嚴重剝削和歧視的主要原因。因此，**建議全面檢討「配額制」的種種不合理情況，並允許勞工自由轉換僱主**，這樣不僅可以降低移住勞工被雇主剝削的風險，更可以藉此消除仲介業居中抽佣的不法情事，避免遭受層層剝削。

結論性意見 38, 39 點，外籍勞動者相關人權之建議事項

Taiwan International Medical Alliance(台灣國際醫學聯盟）對 38、39 兩點的建議

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一、移工權利保障制度面與執行面之缺失

1. 近年來就業服務法與其相關子法規有不少修正，但仍有許多規定對移工進行有別於本國勞工、缺乏正當性之差別待遇，同時也在外籍工作者間給予差別待遇，有違平等/不歧視原則，以及人權公約與國際勞工公約保障之基本權利，例如：

   (1) **就業服務法**§52 規定，同為外籍工作者，在契約期滿欲更新工作簽證時，藍領移工必須出國才能再辦理入境，導致相當之經濟損失，且無正當化事由。

   (2) 移工健康權利之侵犯(ICESCR§12)：「**受聘僱外國人健康檢查管理辦法**」規定，健康檢查若不合格，移工將喪失聘僱許可。更甚者，勞委會 2012 年修訂子法規「**雇主辦理與所聘僱第二類外國人終止聘僱關係之驗證程序**」,對於外國人健康檢查不合格如肺結核或罹患經中央衛生主管機關指定之傳染病者(包括愛滋病)，將不需經由縣市政府驗證程序就可以出國。ICESCR 第 18、19 一般意見書清楚指出禁止國家就移工身分、就健康狀況(包括愛滋)進行歧視(例如第 18 號意見書第 12(b)、18、21 段；第 19 號意見書第 13、29、36、37 等)。

   (3) 愛滋病毒強制篩檢及其費用負擔:對外籍勞工進行強制性愛滋篩檢，違反 UNAIDS 與 ILO 之宣言與原則。根據**人類免疫缺乏病毒傳染防治及感染者權益保障條例**第十五條第一項第五款，外籍勞工遭衛生署疾管局公告為必須強制接受愛滋病毒篩檢之族群[1]，是外籍工作者中，唯一遭強制者。同條文第二項則說明此等強制篩檢由政府編列

[1] 中華民國九十七年一月十八日行政院衛生署署授疾字第 09700000166 號公告，須強制篩檢之族群包括：性工作者、毒品使用者或販賣人、藥物濫用性派對參加者、矯正機關收容人、性病患者、外籍勞工、役男、義務役軍人、醫師認為有必要篩檢之嬰兒等。http://www2.cdc.gov.tw/ct.asp?xItem=6442&CtNode=1904&mp=220

費用來負擔，但實務上政府排除外籍勞工適用該條項。

(4) 不得**自由轉換雇主**之規定：現行**就業服務法**雖已放寬轉換雇主之規定，但移工仍只能在自己沒有可歸責事由的情況下，才能申請轉換雇主，該規定已違反平等與不歧視原則多項條文，同時也侵犯移工受 ICESCR §6 保障之權利。

2. 除就業服務法外，移工依身處的行業別、職業別、聘僱機構規模、甚至聘僱管道(如前述之漁工)，有不同的社會法與勞動法適用。原則上雖應與同性質之本國勞工同享相同保障，但在日常實作，卻有極大落差。以下擇要說明：

(1) **勞動基準法**：近年來雖不斷擴大適用行業，但最易遭勞動剝削之家事勞工未在適用之列，其勞動條件與工作環境缺乏保障。

(2) **勞工保險法**：勞工保險包括普通事故保險與職業災害保險，比起勞動基準法涵蓋更多的行業與職場，強制投保之基礎除行業別外，主要根據職場規模，5 人以上屬強制加保，5 人以下採自願加保。移工之中，除家事勞工以外，只要受僱於五人以上職場，均必須加保，但不適用失業保險部分。家事勞工的部分，行政部門建議雇主為其投保商業意外險，但投保率僅約三成。本報告認為依聘僱單位規模決定加保之強制或自願性，本身就有違平等原則(ICCPR §2、§26)，以及 ICESCR §9、第 19 號一般性意見關於社會保障之規定。

(3) 職業災害之保護與救濟：職業災害補償與救濟分別訂於**勞動基準法**第七章、**勞工保險法**之職災保險、以及**職業災害勞工保護法**等，最後一項法律對於未受勞基法與勞工保險法保障之勞工更是重要，但無證勞工未被涵納在內。職業災害補償採無過失責任，雇主負全部責任；而工作環境安全衛生與勞動條件之確保，亦為雇主與國家應負之責，以勞工有無工作證件連結請求資格，屬不當連結。依據 ICESCR 第 19 號意見書之精神，不論是勞動基準法(適用行業)，或是職災勞工保護法，應平等適用於勞工，不問是本國、外籍，有照、無證。

3. 違反 ICESCR §7 同工同酬：勞動基準法§25 明文規定同工同酬，但以勞委會 2011 年的資料比較，無論是製造業或營造業，外籍勞工相較本國勞工都呈工時較長、工資較低。本國籍看護之勞動條件雖未有官方統計，但根據市場行情，全時間看護收費大約是新台幣 5 萬至 6 萬。

12 小時制者，平均 3 萬至四萬。外籍看護工難以區分工作和非工作時間，保守估計每日工作超過 13 小時，且超過半數從來沒休假，月平均薪資 18,800，顯然不符同工同酬之要求。

二、結論與建議

4. 移工聘僱制度之改良與直聘之落實：為減少移工受仲介剝削，政府雖設置直聘制度，但利用率極低。勞工行政部門應了解低度運用之原因，提高使用直聘誘因，並使服務更具可近性。

5. 同工同酬原則。移工工資與基本工資不應脫鉤，且鼓勵家事勞動者給付基本工資。

6. 自由轉換雇主：為避免外籍勞工因受限於定期契約不得轉換雇主，容易導致勞動剝削與強迫勞動之人權剝奪，建議應可參照國勞公約第 143 號對於定期契約以兩年為限及自由就業之原則，另應參酌國際修法趨勢強調勞工於適當工作期限後應可自由受僱之原則，逐步放寬轉換雇主之限制。

7. 儘速建立充分保障本國與外籍家務工作者之勞動法制，不論是透過訂定家事勞動法，或於勞動基準法內設置專章。對國內雇主進行教育及訪查，以避免雇主侵犯家事勞動者之權利。

8. 加強勞動檢查，將違法情況最為嚴重、勞動條件最堪慮之行業(如漁工)，列為優先檢查對象。職場規模 5 人以下不強制納入勞工保險之規定應予檢討。

9. 無證外勞應享有最基本之健康照護與社會保障之權利，包括勞動基準法之保障及職業災害之救濟。

10. 立即停止將罹患肺結核或愛滋病之移工強制遣返之政策。

11. 強化國際合作，以抑止本國或他國仲介對外籍勞工之剝削。

6 月 13 日落實結論性意見會議

台灣人權促進會執行秘書施逸翔發言單

針對結論性意見第 38 點和 39 點

1. 由於台灣勞工陣線協會今天無法出席，因此本人摘要台灣勞工陣線協會之書面回應重點，包括建議勞基法應一體適用各類型受僱關係勞工，縱使制定「家事勞工保障法」，仍應以勞基法為最低標準。以及建議全面檢討「配額制」的種種不合理情況，並允許勞工自由轉換僱主。（詳見台灣勞工陣線協會書面資料。）

2.特別補充的是，儘管結論性意見第 39 點有提及勞工安全衛生法，但另外一個跟勞工安全有關的修法草案，是 2012 年 4 月行政院核定《職災勞工保護法》 修法草案，雖然目前勞委會的修法版本有擴大適用到合法有證的移工，但範圍仍然沒有納入持觀光護照或其它方式入台工作，而被視為「非法移工」的外國人。台權會與工作傷害人協會曾於 2012 年 10 月 24 日赴勞委會陳情抗議此事，並有兩個組織所協助的孟加拉移工個案 Noro 現身說法，他的故事是這樣的：孟加拉籍的 NoRo，在母國時從事修手錶的工作，婚後育有三個小孩，但微薄的收入根本無法撐起一個家，於是在非法仲介的哄騙下，被轉介來台灣工作，所持的是觀光簽證，當然很快就逾期居留了。沒想到來台是惡夢的開始，被軟禁幾天後，NoRo 被送到一個工廠工作，做的是台灣人不願做的粉碎磁磚的粗重工作，每天上工 10 小時以上，完全無加班費，且一個月常常只休一天。NoRo 工作幾個月後就發生職災，左手無名指被機具切斷了，老闆送他去醫院，但因擔心非法外勞身份曝光會影響到雇主，於是老闆就把 NoRo 丟在醫院走人。還好 NoRo 信仰伊斯蘭時，台灣友人幫忙他就醫，但三天後 NoRo 為了一家大小的生計，在未痊癒時又回去工作。2011 年 6 月，NoRo 再度發生職災，這次把手指都壓斷了，右手拇指嚴重骨折，老闆同樣把 NoRo 送到醫院人就走了，NoRo 開刀後把之前存的一點點錢都用光了，傷還沒好就又回去上班了，但因傷得太重而無法再勝任原本的工作，老闆竟開始罵他，甚至還把他趕走，最後一個月的薪資也沒給，醫藥費也沒付，之後 NoRo 找朋友回去向老闆討薪資，但老闆完全不承認 NoRo 有在這裡工作過。NoRo 經朋友轉介來找台權會與工傷協會協助處理，三方協調後決定向警察自首並向雇主爭取職災權益。NoRo 當時的處境是借住在朋友家，因非法身份也無法再找工作，右手大拇指目前完全無法使用，在工傷協會的幫助下至台大醫院檢查，

醫生診斷已錯過癒合時機，可再動一次手術試試看，但就算術後也不可能恢復原本功能。NoRo 當時生活困難，更別說再度就醫，在協會協助下，好不容易讓 NoRo 以積欠醫療費的方式先做醫療，光醫療費就三萬元，且還在增加中，訴訟方面也估計至少要進行半年，NoRo 自己在台灣的生活已經堪慮，但遠在孟加拉的妻兒日前還傳真表示，一家大小已陷入斷炊之苦，希望可以獲得協助。這就是非法外籍移工的處境，雇主為了自己賺錢，把這些移工利用完就棄之不顧，國家卻拿這樣的雇主沒有辦法（因為舉證責任都在勞方，雇主否認有雇用 NoRo，勞委會的勞動檢查員說無法證明 NoRo 與雇主有雇傭關係）。

所以，Noro 根本無法享有像勞委會所說的，因為人口販運都從寬認定，所以該有的庇護和醫療照顧應該都可以享有，事實上就是有像 Noro 這樣移工是無法享有充分的保障。因此，強烈呼籲勞委會籲，「職災勞工保護法」應修法全面適用，只要有受雇事實發生職災，都應適用職災勞工保護法，不應排除任何身份的勞工。請參酌附件民間版修法版本，以及相關報導與新聞稿。

關於勞工安全衛生法與職災勞工保護法的修法建議，工作傷害人協會的建議如下：

A.工人版勞安法修法建議：

（1）過勞入型責：現在過勞情況日益嚴重，血汗工廠血汗醫院草菅人命消息頻傳，我們認為雇主把人操到死行同殺人，應付刑責。日本韓國過勞皆已入刑責，我們要求台灣比照辦理。

（2）有毒化學物質資訊全面公開：RCA 工傷事件訴訟至今已經十二年，工人們遭受毒害確不自知，如今高科技產業所用的有毒化學物質越來越多，但工人們連自己觸碰到的有毒化學物質究竟是什麼確從頭至尾被雇主以商業機密之名被矇在鼓裡，因此我們要求有毒化學品資訊對工人全面公開，希望 RCA 事件不要再度發生 。

B.工人版職災勞工保護法修法建議：

（1）全面擴大適用：目前職保法只保障合法外勞，政院版也只增加保護逃跑外勞（合法轉非法），但我們認為應擴大保護所有職災勞工，因為不管合法非法，只要發生職災，受害者整個家庭都會陷入困境，非法外勞更是會陷入生不如死的處境，應此我們覺得只要是職災勞工就應受職災勞工保護法保護，支持其最機本的生活和醫療。

（2）終生照護照：職災對勞工的身心都是即大的打極，有的勞工受傷後可能再也無法回到正常生活，如果至殘，要再回職場更是難上加難，而有的人甚至是整個家的經濟支柱，傷殘後整個家庭都陷入困境，因此我們覺得對身心傷殘的勞工應該終身照護，讓職災的受害者都能維持最基本的生活。

（3）工會參與：目前職災認定委員會只有醫療專家組成，然而只有勞工

才最了解工作現場真正的勞動情況，而這個聲音不能在認定委員會被乎略，因此我們認為認認定委員會至少需有工會參與，讓委員會能做最完整的評估。

3. 針對漁業署代表的發言，關於外籍漁工不用基本薪資之保障，而以分紅利的方式，捕魚越多，紅利越多。這樣的說法和方式令人非常不安，若外籍漁工在沒有基本薪資的保障下，必須補到魚才有紅利，那麼如果補不到魚，是否漁工就完全沒有薪水呢？又以目前海洋資源越來越匱乏的情況下，漁業署這樣的發言更是令人疑慮，該署到底有沒有一個兼顧外籍漁工人權保障與海洋資源永續發展的政策！紅利制度看起來，不但無法保障外籍漁工的基本薪資，所謂補越多紅利越多的說法，也意味著漁業署鼓勵漁船大量地捕魚，不用去管漁業資源已經匱乏的現況。
無論如何，我們並不清楚漁業署所謂的分紅利制度是什麼內容，請漁業署代表提供相關資料與統計數據，究竟分紅利制度的內容是什麼？如何運作？分紅制度是否可以讓外籍漁工的薪資高於基本工資？還是實際上分紅制度下的外籍漁工，往往薪資低於基本工資？這些我們都不清楚。請漁業署提供相關的數據和統計資料。

4. 針對彭坤業司長的說明，關於這系列會議的效力，以及只能交由各部會自己去決定的說法，顯得過於保守。法務部作為兩公約施行法的主責機關，又肩負「人權大步走」計畫之推展，且兩公約國際審查也有 10 位聯合國人權專家的審查與 81 點結論性意見，馬英九總統更公開宣示過，不符合兩公約規範之國內法律、命令及行政措施，不待修法完成，應直接適用兩公約（來源：https://www.youtube.com/watch?v=d15xA3yibFc）。基於上述種種條件，法務部應本於常常念茲在茲的「依法行政」，站在依兩公約施行法的高度，要求各級政府機關積極落實兩公約，尤其 81 點建議中，有許多專家直接講已經違反公約的國內法律和政府作為，以及專家建議應盡快修改的法律、政策，更是刻不容緩要去面對的問題，法務部不應消極地交給各部會自行決定和辦理，而應積極督促各級政府機關，若不依照兩公約規範與 81 點結論性意見去落實，就有違反國內法律之虞和不遵守公約義務的責任。

5.轉達張文貞老師的意見，聯合國在舉行追蹤各締約國落實結論性意見的會議之後，都會做成一種 summary record 的文件，摘要每次會議中各發言人的重點。議事組的工作確實很辛苦，讓每次會議可以順利進行，但如果未來系列會議的紀錄都可以仿這種 summary record 的方式去紀錄，應該會是比較好的會議記錄方式。請參閱附件。

2012/10/24 苦勞報導

職保法排除非法移工 雇主用完即丟

工傷協會籲擴大適用範圍

陳韋綸 苦勞網記者

責任主編：王顥中

今年 （2012）4 月行政院核定《職災勞工保護法》 修法草案，修法重點包括擴大請領補助適用範圍，使讓「逃跑外勞」未來也可請領相關補助與津貼，然而，範圍仍然沒有納入持觀光護照或其它方式入台工作，而被視為「非法移工」的外國人。今天（10/24）工作傷害受害者協會偕同發生職災卻求助無門的個案前往勞委會，要求職保法不分本、外勞或是合法、非法，應擴大全面適用，並批評政院版的修法草案，將造成雇主使用非法移工、發生職災卻不需負責的法律漏洞。

政院版草案中，將死亡與失能補助與職災後生活津貼適用的請領對象，擴大至「逃跑外勞」，也就是依《就業服務法》入境，但因故未持有工作證明文件而發生職災者，但卻排除了「非法移工」；工傷協會認為，職保法應該是「身分法」，亦即只要實際上從事勞動的受雇者，無論有無領有核准工作證明文件、是否依照就服法入境，都應受到保障。

工傷協會在勞委會前演出行動劇，指控黑心仲介未合法引進移工、發生職災後政府不願負起責任，卻讓勞工獨自承擔後果。（攝影：陳韋綸）

來自孟加拉的 Noro 出示粉碎磁磚工作期間因職災受傷的雙手，希望政府能夠協助保障他應有的勞動權益。（攝影：陳韋綸）

現場，來台從事粉碎磁磚工作的孟加拉籍工人 Noro 控訴自己被雇主丟包、台灣勞政系統也不願承接保障工人責任的血淚。在孟加拉從事手錶維修的 Noro 表示，自己支付 5,000 多元美金費用來台後，被仲介帶到粉碎磁磚的工廠工作，但不幸兩度發生職災，分別導致左手無名指被切斷，以及右手大拇指嚴重骨折，「去了醫院才知道，自己沒有勞保與健保，當初的仲介原來是非法的」，而雇主擔心使用非法外勞的事實曝光，將他載到醫院後便逕自離開，不願支付醫藥費。

Noro 在工傷協會等團體的協助下申請勞動檢查，勞檢時雇主否認曾雇用 Noro，北區勞檢所卻因此認定沒有僱傭事實的存在，勞檢不確實也增加 Noro 爭取自

己權益的難度；因此，工傷協會也要求重新勞檢，不應只聽取資方單方面的說法、應採納勞方陳訴。

工傷協會專員楊國禎表示，Noro 的處境並非個案，但是這些未依照就服法來台工作的外籍勞工，卻因為相對缺乏資源，加上顧忌自己「非法」的身分，難以出面爭取勞動權益；而雇主更是肆無忌憚地使用非法移工，當發生職災時，這些人「被如免洗筷般用完就丟」，他認為只要有工作事實，相關的勞動權益就應受到保障。楊國禎認為，職保法應將這群人納入適用對象、由國家先行帶位求償負起照顧責任後，再以國家的權力對惡質雇主追討保費並課以罰鍰咎責。

白刷刷黑戶人權行動聯盟發言人龔尤倩指出，聯合國國際勞工組織（International Labour Organization, ILO）使用「undocumented」即「無照的」指稱目前所謂的「非法移工」，因為這些勞工違反的只是出入境規定，而不應該被罪犯化，其基本勞動權益更是和合法勞工一樣應該受到保障。

對於 Noro 的個案，勞委會承諾將重起勞檢；勞委會勞工保險處副處長鄧明斌表示，如果確實存有僱傭關係，即使是非法移工發生職災，雇主還是要負起責任，而一旦僱傭關係確立，將對雇主課以保費 1.2 倍的罰鍰。

然而，針對職保法全面擴大適用的訴求，鄧明斌表示，在非法移工未加保的情況下，擴大適用恐將增加國家負擔；同時擔心此舉將等同於變相鼓勵外勞非法打工，因此目前暫時未列入修法草案中。對此，工傷協會專員賀光卍認為勞委會是在「逃避責任」，強調政府應該是去反省為何追討不到壞雇主應繳的保費，而不是反過來藉由排除適用對象，推卸保障勞工的責任。

【相關報導】

- 2012/04/26 苦勞報導 「國際工殤日前夕 工傷團體推『勞安雙法』」

【《職災勞工保護法》草案行政院版】

【《職災勞工保護法》草案工傷協會版】

主題：勞工 標籤： 外勞工傷移工職保法職災 張貼者： 陳韋綸

工傷協會職業災害勞工保護法修法說明

一、由相關部會代表及專家學者、勞工及雇主團體代表組成職業災害保護專款管理委員會負責監督及審議。(第五條)

二、目前職保法雖設有未加入勞工保險之職災勞工，可先向勞保局申請補助的代位求償機制，但僅限於十等失能及死亡補助，對於未達十等之職災勞工最需要的醫療、傷病及失能仍無任何補助。另有投保的勞工，也常遭遇雇主不依法給付職災補償的情況。為使職災勞工能於第一時間得到職災權益的基本保護，應先給予補助，再由公權力介入向雇主代位求償。(第六條、第六之一條、第六之二條)

三、職業災害後已對勞工身心造成障害，足以影響終生，故生活津貼不應限補助年限，應落實終身年金制，擴大照顧職業災害勞工生活安全。(第八、九條)

四、職災勞工保護法是基於現有勞動基準法、勞工安全衛生法、勞工保險條例等職災相關保護制度的不足而設立的特別法，應擴大適用於所有勞工。只要是因工作而遭受職業災害的勞工，都應被本法保障，包括實際從事勞動之受雇者、自營作業之勞工、或未領有核准工作證明文件之外籍勞工。(第九條之一)

五、職災勞工的重建除職業重建外，更應從生活、心理、職能等進行全面性的重建，才能協助職災勞工重新面對傷後人生。另職災事件的影響還擴其家庭，因此，職災保護的任務應加入職災勞工的家庭重建。(第十條)

六、勞雇雙方對職災傷病認定常產生爭議，目前法中僅定有職業病爭議的認定及鑑定機制，並無明定職業傷害的認定機制，為消弭爭議，新增地方主管機關為職業傷害認定主要權責單位。(第十一條)

七、目前勞安法僅限一死三傷才需強制通報，但許多職災或職業病的案件並無強制通報機制，造成日後鑑定、重建、預防上的困難，然醫療機構為職災勞工第一時間接觸的單位，應比照家暴及虐兒案立法強制通報。(第十二條)

八、在勞資權利關係不對等下，為保護勞工生命權，為預防職業病發生及爭議時，有工會組織者得調查作業環境的安衛措施，並要求事業單位進行改善。(第十五條、第十六條、第十八條、)

九、現行法條中僅有官方、職業醫學專家、職業安全衛生專家、法律專家，為使職業疾（傷）病的鑑定有全面考量，應加入勞工團體代表及職業災害勞工團體代表。職業傷病鑑定委員會調查及開會時，應通知當事人或其家屬及工會列席說明，協助職業傷病鑑定。(第十五、十六、十八)

十、雖目前職業病鑑定辦法規定最長以半年為限，但實際鑑定時間均超過此規定，對職業傷病勞工而言，鑑定期間不僅飽受身心折磨，甚至毫無基本經濟收入，為保障職災勞工生存權，應縮短鑑定時間為最多三個月，必要時，至多可延長三個月，並明定於法中。(第十七條)

十一、為使職業災害認定經驗能有所累積，並作為未來職業傷病預防及職鑑(認)定的參考，應將委員會鑑(認)定的案件每年集結成冊、出版公告。(第十九條)

十二、為保障職災勞工健康權及工作權，明定勞工於職災醫療期間不能從事原勞動契約所約定之工作，雇主不得要求復工。（第二十五、三十條）

十三、勞工一旦發生職業災害，醫療告一段落重返工作時，往往會因勞動力損失而面臨雇主刁難甚至想盡辦法終止契約，而現行法令對弱勢職災勞工無法提供完整保障，因此提高雇主終止契約門檻，以確保職災勞工後續之生存權。（第二十六條）

十四、雖然保障職災勞工工作權是優先原則，但現實中常有職災勞工與雇主在處理職災補償過程關係惡化、職災勞工畏懼重回職災發生的職場、或擔心重返職場後被雇主刁難而被迫自行終止契約，因此降低職災勞工主動終止契約門檻，以使職災勞工在勞資關係不平等的條件下，有主動終止契約的選擇。（第二十七條）

十五、為保障職災或職病勞工的醫療權，放寬醫療期間被退保的職災勞工，應可再參加勞保至請領老年給付之日止，而非符合請領老年給付就強制退保。（第三十三條）

十六、目前職災勞工訴訟雖可申請律師補助費，然裁判費仍僅能先申請訴訟救助，一旦敗訴，職災勞工仍得繳納裁判費給法院。而職災勞工的民事求償金額往往都是巨額，職災勞工就算申請到律師費補助，若考量到未來若敗訴的風險，仍常因此而打退堂鼓放棄訴訟。且為確保職災勞工能真正擁有訴訟權，應修改條文加入職災勞工敗訴者，則免除裁判費。（**第三十五條**）

十七、為維護職業災害勞工權益，並有效預防職業災害發生，故加重不肖雇主之罰則。（**第三十九條～第四十條**）。

職業災害勞工保護法部份條文修正案

修正條文	原條文	說明
第一條 為加強職業災害預防、保障職業災害勞工之權益及其家庭之重建，爰制定本法；本法未規定者，適用其他法律之規定。	第一條　為保障職業災害勞工之權益，加強職業災害之預防，促進就業安全及經濟發展，爰制定本法；本法未規定者，適用其他法律之規定。	職業災害勞工保護法立法宗旨除保障職災勞工權益、預防職災發生外，更應明確加強職災勞工及其家庭之重建。
第　二　章　　經費來源、用途、管理及監督	**第　二　章　　經費來源、用途、管理及監督**	維持原章名。
	第　二　條　　本法所稱主管機關：在中央為行政院勞工委員會；在直轄市為直轄市政府；在縣（市）為縣（市）政府。	維持原條文。
	第　三　條　　中央主管機關應自勞工保險基金職業災害保險收支結餘提撥專款，作為加強辦理職業災害預防及補助參加勞工保險而遭遇職業災害勞工之用，不受勞工保險條例第六十七條第二項規定之限制，其會計業務應單獨辦理。 前項專款，除循預算程序由勞工保險基金職業災害保險收支結餘一次提撥之金額外，並按年由上年度收支結餘提撥百分之四十以上，百分之六十以下之金額。	維持原條文。
	第　四　條　　中央主管機關應編列專款預算，作為補助未加入勞工保險而遭遇職業災害勞工之用，其會計業務應單獨辦理。 依第三十三條及第三十四條所處之罰鍰，應撥入前項專款。	維持原條文。
第五條　前二條專款之收支、管理及審核事項，由行政院勞工委員會勞工保險局辦理，並由中央主管機關設置職業災害保護專款管理委員會，負責監督及審議。 前項委員會任期二年，其中職業災害勞工團體與勞工團體代表不得少於委員會總人數三分之二。	第五條　前二條專款之收支、管理及審核事項，由行政院勞工委員會勞工保險局辦理，並由行政院勞工委員會勞工保險監理委員會負責監督及審議。 勞工保險機構辦理本法規定各項業務所需費用，由依勞工保險條例第六十八條規定編列之預算支應。	一、勞工保險監理委員會負責事項多元複雜，宜另行設置職業災害保護專款管理委員會負責監督及審議，並由相關部會代表及專家學者、勞工及雇主團體代表組成，以維護其客觀公允性。 二、專款管理會之組織、會議及相關事項之辦法，由中央主管機

前項管理委員會之組織辦法，由中央主管機關擬訂。 勞工保險機構辦理本法規定各項業務所需費用，由依勞工保險條例第六十八條規定編列之預算支應。		關定之。
第六條　未加入勞工保險而遭遇職業災害之勞工，雇主未依勞動基準法規定予以補償時，得按勞工原有薪資標準申請職業災害傷病、失能、死亡補助，並得申請醫療費用之補助。 前項補助，應扣除雇主已支付之補償金額。 依第一項申請失能補助者，其身體遺存障害須適合勞工保險失能給付標準表第一等級至第十五等級規定之項目及給付標準。 雇主依勞動基準法規定給予職業災害補償時，第一項之補助得予抵充。 第一項勞工原有薪資標準之認定辦法由中央主管機關定之。	第六條　未加入勞工保險而遭遇職業災害之勞工，雇主未依勞動基準法規定予以補償時，得比照勞工保險條例之標準，按最低投保薪資申請職業災害殘廢、死亡補助。 前項補助，應扣除雇主已支付之補償金額。 依第一項申請殘廢補助者，其身體遺存障害須適合勞工保險殘廢給付標準表第一等級至第十等級規定之項目及給付標準。 雇主依勞動基準法規定給予職業災害補償時，第一項之補助得予抵充。	一、九十七年八月十三日修正公布之勞工保險條例已將「殘廢」文字修正為「失能」、「勞工保險殘廢給付標準表」修正為勞工保險失能給付標準，爰配合修正文字。 二、未替其勞工加保，其責任應歸屬於雇主。未加保之勞工發生職業災害是屬於勞資權利相對弱勢的勞工，於第一時間得到職災權益的基本保護，應比照有加保勞工給予同等的保障，再由公權力向雇主代位求償。 三、未加保勞工非次等勞工，不應只限於非死即殘的勞工最低標準之補助，自職災發生時最需要的醫療、傷病、失能、死亡，均應給予補助。
第六條之一　加入勞工保險而遭遇職業災害之勞工，且雇主未依被保險人月薪資總額申報月投保薪資，而雇主亦未依勞動基準法規定予以補償時，得按勞工原有薪資標準，申請職業災害傷病、失能、死亡補助差額。		一、本條新增。 二、 實務經驗中，即便是有加入勞工保險的勞工，雇主低報投保薪資，致勞工遭受職災時僅請領到部份保險給付，而雇主又未依勞基法補償的狀況比比皆是，為使弱勢勞工能於第一時間得到職災權益的基本保護，應先由職保基金補足差額，再由公權力向雇主代位求償。
第六條之二　本條所採薪資計算之標準，不得低於基本工資。		一、本條新增。 二、為保障部份工時的職災勞工之傷病、失能、死亡補助金額，明定薪資標準不得低於基本工資。
	第　七　條　　勞工因職業災害所致之損害，雇主應負賠償責任，但雇主能證明無過失者，不在此限。	維持原條文。

第八條　勞工保險之被保險人，在保險有效期間，於本法施行後遭遇職業災害，得向勞工保險局申請下列補助： 一、罹患職業疾病，喪失部分或全部工作能力，經請領勞工保險各項職業災害給付後，得請領生活津貼。 二、因職業災害致身心障害，喪失部分或全部工作能力，得請領生活津貼。 三、發生職業災害後，參加職業訓練期間，未請領訓練補助津貼或前二款之生活津貼，得請領生活津貼。 四、因職業災害致身心障害，必需使用輔助器具，且未依其他法令規定領取器具補助，得請領器具補助。 五、因職業災害致喪失全部或部分生活自理能力，確需他人照顧，且未依其他法令規定領取有關補助，得請領看護補助。 六、其他經中央主管機關核定有關職業災害勞工之補助。 勞工保險被保險人於本法施行後離職退保，經醫師診斷罹患職業疾病，且係保險有效期間所致，其身心障害，得請領生活津貼。 請領第一項第一款、第二款、第五款及前項之補助，應按月發給免再審核其障害程度。 第一項及第二項補助之條件、標準、申請程序及核發辦法，由中央主管機關定之。 勞工保險被保險人因職業災害死亡，或經中央主管機關認定為重大職業災害事件，或因職業災害住院三天（含）以上者，得發給勞工或其家屬慰問金。	第八條　勞工保險之被保險人，在保險有效期間，於本法施行後遭遇職業災害，得向勞工保險局申請下列補助： 一、罹患職業疾病，喪失部分或全部工作能力，經請領勞工保險各項職業災害給付後，得請領生活津貼。 二、因職業災害致身體存障害，喪失部分或全部工作能力，適合勞工保險殘廢給付標準表第一等級至第七等級規定之項目，得請領殘廢生活津貼。 三、發生職業災害後，參加職業訓練期間，未請領訓練補助津貼或前二款之生活津貼，得請領生活津貼。 四、因職業災害致身體遺存障害，必需使用輔助器具，且未依其他法令規定領取器具補助，得請領器具補助。 五、因職業災害致喪失全部或部分生活自理能力，確需他人照顧，且未依其他法令規定領取有關補助，得請領看護補助。 六、因職業災害死亡，得給予其家屬必要之補助。 七、其他經中央主管機關核定有關職業災害勞工之補助。 勞工保險效力終止後，勞工保險被保險人，經醫師診斷罹患職業疾病，且該職業疾病係於保險有效期間所致，且未請領勞工保險給付及不能繼續從事工作者，得請領生活津貼。 請領第一項第一款、第二款、第五款及前項之補助，合計以五年為限。 第一項及第二項補助之條件、標準、申請程序及核發辦法，由中央主管機關定之。	一、第一項第二款中規定，殘障生活津貼限於一至七等殘始可請領，過於嚴苛，生活津貼的精神在於照顧職災後致身體障害，以致無法恢復原有工作能力的生活補助，因此，應放寬請領標準。 二、第二項生活津貼之請領條件，因需符合「未請領勞工保險給付」，條件過嚴，故本法施行迄未有符合之補助案件，為擴大照顧離職退保後罹患職業病勞工之生活，爰將於本法施行後離職退保，已領同一職業病失能給付者，亦納入得請領生活津貼之範圍。 三、考量勞工保險年金每五年審查其失能等級，爰予比照明定之。 四、職業災害後，對勞工造成終身障害，故生活津貼應突破非死即殘之請領限制，放寬請領範圍，落實終身年金制，擴大照顧職業災害勞工生活安全。

前項慰問金發放之條件、標準、程序及核發辦法，由中央主管機關定之。		
第九條　未加入勞工保險之勞工，於本法施行後遭遇職業災害，符合前條第一項各款情形之一及第五項者，得申請補助。 　　請領前條第一項第一款、第二款及第五款之補助，經核定後按月發給。 第一項補助之條件、標準、申請程序及核發辦法，由中央主管機關定之。	第九條　未加入勞工保險之勞工，於本法施行後遭遇職業災害，符合前條第一項各款情形之一者，得申請補助。 請領前條第一項第一款、第二款及第五款之補助，合計以三年為限。 第一項補助之條件、標準、申請程序及核發辦法，由中央主管機關定之。	配合第八條規定，修正相關文字。
第九條之一　第六條第一項及第九條第一項所定勞工，包括實際從事勞動之受雇者、自營作業之勞工、或未領有核准工作證明文件之外籍勞工。		一、本條為新增。 二、明定第六條第一項及第九條第一項未加入勞工保險之勞工定義，將職業災害勞工保護法施行細則第十五條提升至母法地位。 三、外籍勞工若經非法引進，遭遇職災時，目前無法申請職災相關補助，已違反職業保護法照顧勞工之精神，同時也讓非法雇用外勞之雇主將受職災勞工用後即丟，為保障外籍勞工之勞動權益，應一視同仁，未領有核准工作證明文件的外籍勞工亦可申請補助，但為避免使職災保護專款負擔過重，針對所有補助，主管機關可向雇主代位求償。
第十條　為加強職業災害預防、維護職災勞工之權益及職業災害勞工及其家庭之重建，除中央主管機關應主動運用第三條所定之專款，辦理下列事項外，事業單位、職業訓練機構及相關團體，亦得向勞工保險局申請補助辦理： 一、職業災害之研究。 二、職業疾病之防治。 三、職業疾病醫師及職業衛生護理人員、協助維護及爭取職	第十條　為加強職業災害預防及職業災害勞工之重建，事業單位、職業訓練機構及相關團體辦理下列事項，得向勞工保險局申請補助： 一、職業災害之研究。 二、職業疾病之防治。 三、職業疾病醫師及職業衛生護理人員之培訓。 四、安全衛生設施之改善與管理制度之建立及機械本質安全化制度之推動。	一、明定職災專款的用途，除預防外，另應加強職災勞工及家庭的重建。 二、現行法中，專款除得給予職災勞工申請補助外，僅限事業單位、職業訓練機構及相關團體向勞保局申請補助，辦理職災勞工保護相關事宜；為使中央主管機關也負起職災保護責任，修法加入中央主管機關應主動運用專款辦理職災勞工保護相關事宜。 三、運用職保基金專款辦理補助

災權益相關人員之培訓。 四、安全衛生設施之改善與管理制度輔導及機械設備本質安全化制度之推動。 五、勞工安全衛生之教育訓練及宣導。 六、職業災害勞工之生活、心理、社會重建、職能復健及職業重建。 七、職業災害勞工家庭之輔導與重建。 八、職業災害勞工之職業輔導評量。 九、職業災害勞工權益之宣導及維護。 十、其他與職業災害預防及重建有關之事項。 前項補助之條件、標準與申請程序及核發辦法，由中央主管機關定之。	五、勞工安全衛生之教育訓練及宣導。 六、職業災害勞工之職業重建。 七、職業災害勞工之職業輔導評量。 八、其他與職業災害預防及職業重建有關之事項。 前項補助之條件、標準與申請程序及核發辦法，由中央主管機關定之。	項目，現有項目不夠周全，尤其協助職災勞工維權人員及維權宣導相當不足，造成職災勞工發生職災後求助無門，甚至在維權過程遭受二度傷害，建議增加協助維護及爭取權益相關人員之培訓及職災勞工權益之宣導。 四、職災勞工的重建不僅僅在職業重建，更應從生活、心理、社會、職能、職業全面性的各階段重建，才能協助職災勞工重新面對傷後人生。
第三章 職業傷病通報、認定及鑑定	第三章　職業疾病認定及鑑定	章名修正，並增訂通報條款。
第十一條　醫事人員於執行職務時，知有疑似因執行職務而致傷病者，醫療機構應立即通報當地主管機關。 主管機關接獲通報後，應即行處處理，評估並提供職業災害勞工重重建服務，必要時得進行訪視、調調查。 前項通報之方式及內容，由中央主主管機關會同中央衛生主管機關訂定之。		一、本條新增，原十一條變更條次為十二條。 二、目前勞安法僅限一死三傷才需強制通報，但許多職災或職業病的案件並無強制通報機制，造成日後鑑定、重建、預防上的困擾。
第十二條　　勞工或雇主對於職業傷病認定有異議時，得檢附有關資料，向直轄市、縣（市）主管機關申請認定。	第十一條　勞工疑有職業疾病，應經醫師診斷。勞工或雇主對於職業疾病診斷有異議時，得檢附有關資料，向直轄市、縣（市）主管機關申請認定。	一、原十一條變更條次為十二條。 二、 為消弭職災傷病認定爭議，明定認定權責，勞雇任一方有疑義時，均可向地方主管機關申請認定。
第十三條　直轄市、縣（市）主管機關為認定職業傷病，確保罹	第十二條　直轄市、縣（市）主管機關為認定職業疾病，確保罹患職	一、條次及內文調次變更。 二、職業傷病的認定權責在地方

患職業疾病勞工之權益，應設置職業傷病認定委員會。 前項職業傷病認定委員會之組織、認定程序及會議，準用第十五條至第十七條之規定。	業疾病勞工之權益，得設置職業疾病認定委員會。 前項職業疾病認定委員會之組織、認定程序及會議，準用第十四條至第十六條之規定。	主管機關，地方主管機關就應設置職業傷病認定委員會。
第十四條　直轄市、縣（市）主管機機關對於職業傷病認定有困難及勞工或雇主對於直轄市、縣（市）主管機關認定職業傷病之結果有異議，或勞工保險機構於審定職業傷病認有必要時，得檢附有關資料，向中央主管機關申請鑑定。	第十三條　直轄市、縣（市）主管機關對於職業疾病認定有困難及勞工或雇主對於直轄市、縣（市）主管機關認定職業疾病之結果有異議，或勞工保險機構於審定職業疾病認有必要時，得檢附有關資料，向中央主管機關申請鑑定。	一、條次變更。 二、為減少職災認定爭議，修定職災認/鑑定委員會的任務，除職業病外，同時也認/鑑定職業傷害。
第十五條　中央主管機關為鑑定職業傷病，確保罹患職業傷病勞工之權益，應設職業傷病鑑定委員會（以下簡稱鑑定委員會）。 鑑定委員會置委員十三人至十七人，由中央主管機關遴聘下列人員組成之，並指定委員一人為主任委員： 一、中央主管機關代表二人。 二、行政院衛生署代表一人。 三、職業疾病專門醫師五人至八人。 四、職業安全衛生專家一人。 五、法律專家一人。 六、勞工團體及職業災害勞工團體代表三人至四人。 委員任期二年，期滿得續聘之，代表機關出任者，應隨其本職進退。	第十四條　中央主管機關為鑑定職業疾病，確保罹患職業疾病勞工之權益，應設職業疾病鑑定委員會（以下簡稱鑑定委員會）。 鑑定委員會置委員十三人至十七人，由中央主管機關遴聘下列人員組成之，並指定委員一人為主任委員： 一、中央主管機關代表二人。 二、行政院衛生署代表一人。 三、職業疾病專門醫師八人至十二人。 四、職業安全衛生專家一人。 五、法律專家一人。 委員任期二年，期滿得續聘之，代表機關出任者，應隨其本職進退。	一、條次變更。 二、職業疾（傷）病的鑑定需要各種專業知識多元、全面考量後始得以認定，現行法條中僅有官方、職業醫學專家、職業安全衛生專家、法律專家，完全無勞動領域專家，因此，鑑定過程中常缺乏勞動因子的觀點，為使職業疾（傷）病的鑑定有全面考量，職業疾（傷）病鑑定委員會委員中，應加入勞工團體代表及職業災害勞工團體代表。 三、　調整鑑定委員會之委員組成比例。
第十六條　鑑定委員會應有委員超過二分之一出席，且出席委員中職業疾病專門醫師應超過二分之一，始得開會；開會時，委員應親自出席。為提供職業傷病相關資料，鑑定委員會於必要時，得要求雇主提供相關資料，雇主不得拒絕。 鑑定委員會開會時，應通知當事	第十五條　鑑定委員會應有委員超過二分之一出席，且出席委員中職業疾病專門醫師應超過二分之一，始得開會；開會時，委員應親自出席。為提供職業疾病相關資料，鑑定委員會於必要時，得委請有關醫學會提供資料或於開會時派員列席。 鑑定委員會開會時，得視案情需	一、條次變更。 二、職業傷病鑑定通常需要工作現場的暴露史及工作內容、勞動條件等相關資料作為鑑定參考依證，在勞資權利關係不對等的狀況下，鑑定委員會得要求雇主提出，雇主不得拒絕。 三、為使職業傷病的鑑定有全面考量，職業傷病鑑定委員會開會

人、代理人及工會代表列席說明，並得視案情需要，另邀請專家、有關人員或機關代表一併列席。 鑑定委員會於必要時，亦得委請有關醫學會提供資料或於開會時派員列席。	要，另邀請專家、有關人員或機關代表一併列席。	時，應通知當事人或其家屬與工會列席說明。
第十七條　中央主管機關受理職業傷病鑑定之申請案件時，應即將有關資料送請鑑定委員會委員作會議審查，並以各委員意見相同者四分之三以上，決定之。 未能依前項做成鑑定決定時，由中央主管機關送請鑑定委員會委員作第二次會議審查，並以各委員意見相同者三分之二以上，決定之。 第二次會議審查未能做成鑑定決定時，由鑑定委員會主任委召集全體委員開會審查，經出席委員投票，以委員意見相同者超過二分之一，決定之。 每案鑑定時間不得超過三個月。必要時，得延長鑑定時間，延長時間不得超過三個月。	第十六條　　中央主管機關受理職業疾病鑑定之申請案件時，應即將有關資料送請鑑定委員會委員作書面審查，並以各委員意見相同者四分之三以上，決定之。 未能依前項做成鑑定決定時，由中央主管機關送請鑑定委員會委員作第二次書面審查，並以各委員意見相同者三分之二以上，決定之。 第二次書面審查未能做成鑑定決定時，由鑑定委員會主任委員召集全體委員開會審查，經出席委員投票，以委員意見相同者超過二分之一，決定之。	一、條次變更。 二、近年來職業病鑑定案件，鑑定時間往往過長，甚至有長達四年之久的紀錄，雖目前鑑定辦法規定最長以半年為限，但對職業傷病勞工而言，鑑定期間不僅飽受身心折磨，甚至毫無基本的經濟收入，為保障職災勞工生存權，應縮短鑑定時間為最多三個月，並明定於法中。
第十八條　職業傷病鑑定委員會認有必要時，得由中央主管機關安排職業傷病鑑定委員進行調查，調查時，得會同勞動檢查員及相關專家學者進行協助。 實施調查時，應通知當事人或其家屬及工會代表到場了解並協助說明，雇主不得規避、妨礙或拒絕。	第十七條　職業疾病鑑定委員會認有必要時，得由中央主管機關安排職業疾病鑑定委員，依勞動檢查法會同勞動檢查員至勞工工作場所檢查。	一、條次變更。 二、職業傷病鑑定委員會為鑑定需要，到勞工工作場所進行調查時，為使調查不落入只聽取資方片面意見，無法達到調查真相的效果，法中應明定調查時，應通知當事人或其家屬與工會到場了解並協助說明，雇主不得拒絕。
第十九條　職業傷病鑑（認）定委員會應按年將鑑（認）定案例集結成冊出版並公告之。 中央主管機關每年應提出職業災害預防政策白皮書。		一、本條新增，原十九條變更至二十一條。 二、為使過往經驗能有所累積，作為未來職業傷病預防及職業傷病鑑（認）定的參考，應將委員會鑑（認）定的案件每年集結成冊、出版並公告。
第四章　職業災害勞工及其家	第四章　促進就業	修改章名，職災勞工的重建不僅

庭之重建		限於就業，生活、心理，社會各面向都需要，另，職災事件的發生影響所及不僅是勞工個人，整個家庭都受影響，因此，職災保護的任務應加入職災勞工家庭的重建。
第二十條　職業災害勞工經醫療終止後，主管機關應依其意願及工作能力，協助其就業；對於缺乏技能者，應輔導其參加職業訓練，協助其迅速重返就業場所。	第十八條　　職業災害勞工經醫療終止後，主管機關得依其意願及工作能力，協助其就業；對於缺乏技能者，得輔導其參加職業訓練，協助其迅速重返就業場所。	一、條次變更。 二、協助職災勞工重返就業場所是主管機關的職責，因此將「得」改成「應」。
第二十一條　職業訓練機構辦理前條訓練時，應安排適當時數之勞工安全衛生教育。	第十九條　　職業訓練機構辦理前條訓練時，應安排適當時數之勞工安全衛生教育。	條次變更。
第二十二條　事業單位僱用職業災害勞工，而提供其從事工作必要之輔助設施者，得向勞工保險局申請補助。但已依身心障礙者權益保障法有關規定領取補助者，不在此限。	第二十條　事業單位僱用職業災害勞工，而提供其從事工作必要之輔助設施者，得向勞工保險局申請補助。但已依身心障礙者保護法有關規定領取補助者，不在此限。	一、條次變更。 二、「身心障礙者保護法」已修正為「身心障礙者權益保障法」。
第二十三條　主管機關對於事業單位僱用職業災害勞工績優者，得予以獎勵。	第二十一條　主管機關對於事業單位僱用職業災害勞工績優者，得予以獎勵。	條次變更。
第　五　章　其他保障	**第　五　章　其他保障**	維持原章名
第二十四條　　職業災害勞工經醫療終止後，直轄市、縣（市）主管機關發現其疑似有身心障礙者，應通知當地社會行政主管機關主動協助。	第二十二條　　職業災害勞工經醫療終止後，直轄市、縣（市）主管機關發現其疑似有身心障礙者，應通知當地社會行政主管機關主動協助。	條次變更。
第二十五條　勞工於職災醫療期間不能從事原勞動契約所約定之工作，雇主不得要求復工。		一、本條新增，原二十三條變更條次為二十六條。 二、許多職災勞工於醫療期間，就被雇主要求返回工作，為保障職災勞工健康權及工作權，明定勞工於職災醫療期間不能從事原勞動契約所約定之工作，雇主不得要求復工。
第二十六條　非有下列情形之一者，雇主不得預告終止與職業災害勞工之勞動契約： 一、歇業，報經主管機關核定者。	第二十三條　非有下列情形之一者，雇主不得預告終止與職業災害勞工之勞動契約： 一、歇業或重大虧損，報經主管機關核定者。	一、條次變更。 二、為保障職災勞工的工作權，提高雇主終止契約的門檻。

二、職業災害勞工經醫療終止後，經醫療機構認定心神喪失或失能，且無法依第三十條安置適當工作者。 三、因天災、事變或其他不可抗力因素，致事業不能繼續經營，並報經主管機關核定者，有工會組織者應取得其同意。	二、職業災害勞工經醫療終止後，經公立醫療機構認定心神喪失或身體殘廢不堪勝任工作者。 三、因天災、事變或其他不可抗力因素，致事業不能繼續經營，報經主管機關核定者。	
第二十七條　有下列情形之一者，職業災害勞工得終止勞動契約，雇主不得拒絕之： 一、經醫療機構認定生理或心理不堪勝任原工作者。 二、事業單位改組或轉讓，致事業單位消滅者。 三、雇主未依第三十條規定辦理者。 四、對雇主依第三十條規定安置之工作未能達成協議者。	第二十四條　有下列情形之一者，職業災害勞工得終止勞動契約： 一、經公立醫療機構認定心神喪失或身體殘廢不堪勝任工作者。 二、事業單位改組或轉讓，致事業單位消滅者。 三、雇主未依第二十七條規定辦理者。 四、對雇主依第二十七條規定安置之工作未能達成協議者。	一、條次變更及內文條次變更，將「第二十七條」文字修正為「第三十條」。 二、降低職災勞工主動終止勞動契約的門檻。
第二十八條　雇主依第二十六條第一款、第三款，或勞工依第二十七條第二款至第四款規定終止勞動契約者，雇主應依勞動基準法之規定，發給勞工資遣費。 雇主依第二十六條第二款，或勞工依第二十七條第一款規定終止勞動契約者，雇主應依勞動基準法之規定，發給勞工退休金。前兩項勞工適用勞工退休金條例之工作年資，其資遣費依退休金條例規定計給，不得限制給付年資。退休金除依退休金條例計給外，並應加給提撥金額之兩倍給之。 本法規定之資遣費、退休金請求權與勞動基準法、勞工退休金條例規定之請求權，職業災害勞工應擇一行使。	第二十五條　雇主依第二十三條第一款、第三款，或勞工依第二十四條第二款至第四款規定終止勞動契約者，雇主應依勞動基準法之規定，發給勞工資遣費。 雇主依第二十三條第二款，或勞工依第二十四條第一款規定終止勞動契約者，雇主應依勞動基準法之規定，發給勞工退休金。 前二項請求權與勞動基準法規定之資遣費，退休金請求權，職業災害勞工應擇一行使。	一、條次變更及內文條次變更，將「第二十三條」文字修正為「第二十六條」;「第二十四條」修正為 「第二十七條」。 二、因應勞退新制之實施，修改職災勞工資遣費及退休金之給付方式。
第二十九條　雇主依第二十六條第一項規定預告終止與職業	第二十六條　雇主依第二十三條第一項規定預告終止與職業災害	條次變更及內文條次變更，將「第二十三條」文字修正為「第

災害勞工之勞動契約時，準用勞動基準法規定預告勞工。 職業災害勞工依第二十七條第一款規定終止勞動契約時，準用勞動基準法規定預告雇主。	勞工之勞動契約時，準用勞動基準法規定預告勞工。 職業災害勞工依第二十四條第一款規定終止勞動契約時，準用勞動基準法規定預告雇主。	二十六條」;「第二十四條」修正為 「第二十七條」。
第三十條　職業災害勞工經醫療終止後，雇主應按其健康狀況、意願及能力，安置適當之工作，並提供其從事工作必要之輔助設施。安置之工作以原工作優先；另行安置之工作，其勞動條件不得低於遭受職業災害前之勞動條件。	第二十七條　職業災害勞工經醫療終止後，雇主應按其健康狀況及能力，安置適當之工作，並提供其從事工作必要之輔助設施。	一、條次變更 二、職災勞工醫療終止後雇主除考量勞工健康狀況及能力外，並應考量其意願安置適當工作，且明定安置工作應以原工作優先。 三、為保障職災勞工重返職場之勞動權益，明定另行安置之工作勞動條件不得低於職災前原有勞動條件，以防止雇主借降低勞動條件逼職災勞工離職。
第三十一條　事業單位改組或轉讓後轉讓後所留用之勞工，因職業災害致身心障礙、喪失部份或全部工作能力者，其依法令或勞動契約原有之權益，對新雇主繼續存在。	第二十八條　事業單位改組或轉讓後所留用之勞工，因職業災害致身心障礙、喪失部份或全部工作能力者，其依法令或勞動契約原有之權益，對新雇主繼續存在。	條次變更。
第三十二條　職業災害未認定前，勞工得依勞工請假規則第四條規定，請普通傷病假，雇主不得拒絕。但普通傷病假期滿，仍未完成職業傷病認定者，得續請普通傷病假，直至完成認定。 前項認定結果為職業災害，再以公傷病假處理。	第二十九條　職業災害未認定前，勞工得依勞工請假規則第四條規定，先請普通傷病假，普通傷病假期滿，雇主應予留職停薪，如認定結果為職業災害，再以公傷病假處理。	一、條次變更。 二、職業災害與職業病認定曠日費時，為保障職災勞工工作權，應放寬勞工請普通傷病的期限。
第三十三條　參加勞工保險之職業災害勞工，於職業災害醫療期間終止勞動契約並退保者，得以勞工團體或勞工保險局委託之有關團體為投保單位，或逕向勞工保險局申報繼續參加勞工保險普通事故保險，至請領老年給付之日止，不受勞工保險條例第六條之限制。 前項勞工自願繼續參加普通事故保險者，其投保手續、保險效力、投保薪資、保險費、保險給付等辦法，由中央主管機關定之。	第三十條　參加勞工保險之職業災害勞工，於職業災害醫療期間終止勞動契約並退保者，得以勞工團體或勞工保險局委託之有關團體為投保單位，繼續參加勞工保險普通事故保險，至符合請領老年給付之日止，不受勞工保險條例第六條之限制。 前項勞工自願繼續參加普通事故保險者，其投保手續、保險效力、投保薪資、保險費、保險給付等辦法，由中央主管機關定之。	一、條次變更。 二、為保障職災或職病勞工的醫療權，放寬醫療期間被退保的職災勞工，應可再參加勞保至請領老年給付之日止，而非符合請領老年給付就強制退保。

	第三十一條　　事業單位以其工作交付承攬者，承攬人就承攬部分所使用之勞工，應與事業單位連帶負職業災害補償之責任。再承攬者，亦同。 前項事業單位或承攬人，就其所補償之部分，對於職業災害勞工之雇主，有求償權。 前二項職業災害補償之標準，依勞動基準法之規定。同一事故，依勞工保險條例或其他法令規定，已由僱用勞工之雇主支付費用者，得予抵充。	維持原條文
第三十五條　因職業災害所提民事訴訟，法院應依職業災害勞工聲請，以裁定免繳裁判費，並且不受民事訴訟法第 108 條限制。 職業災害勞工聲請保全或假執行時，法院應免除其供擔保之金額。但顯無勝訴之望者不適用前兩項規定。	第三十二條　因職業災害所提民事訴訟，法院應依職業災害勞工聲請，以裁定准予訴訟救助。但顯無勝訴之望者，不在此限。 職業災害勞工聲請保全或假執行時，法院得減免其供擔保之金額。	目前職災勞工訴訟雖可申請律師補助費，然裁判費仍僅能先申請訴訟救助，一旦敗訴，職災勞工仍得繳納裁判費給法院。而職災勞工的民事求償金額往往都是巨額，職災勞工就算申請到律師費補助，若考量到未來若敗訴的風險，常因此而放棄訴訟，為確保職災勞工能真正擁有訴訟權，故修正本條文。
第三十六條　職業災害勞工之受領補償、賠償之權利，自確認屬職業災害之日起，因兩年間不行使而消滅。		一、本條新增。 二、許多職業病與災害是在當事人離開原工作單位後，才發現、或鑑定完成的，故明文規定請領補賠償權利之期限。
第三十七條　為增進勞工對勞工安全衛生、職業災害相關權益之認識，雇主每月至少應對在職勞工辦理一次勞工教育課程，每次課程至少一小時。		一、本條新增。 二、為增進勞工對安全衛生及職災權益之認識，明定雇主有義務定期對在職勞工辦理勞工教育。
第三十八條　依據政府採購法參與採購案之廠商，於一年內曾發生重大職災記錄，五年內不得承攬任何政府採購案件。		一、本條新增， 二、預防職災應從政府辦理之採購案帶頭做起，因此明定黑名單制度，限制有發生重大職災的廠商參與政府採購之權利。
第六章　罰則	第六章　罰則	章次變更。
第三十九條　雇主違反第十八條、第二十五條、第二十八條第一項、第二項、第三十條至第三十二條規定者，主管機關應通知	第三十三條　雇主違反第十七條、第二十五條第一項、第二項、第二十七條至第二十九條規定者，主管機關應通知限期改善，並處新台幣	條次及內文條次變更。

限期改善，並處新台幣五萬元以上三十萬元以下罰鍰。經限期改善或繼續限期改善，而未如期改善者，得按次分別處罰，至改善為止。	五萬元以上三十萬元以下罰鍰。經限期改善或繼續限期改善，而未如期改善者，得按次分別處罰，至改善為止。	
第四十條　依法應為所屬勞工辦理加入勞工保險而未辦理之雇主，其勞工發生職業災害事故者，按僱用之日至事故發生之日應負擔之保險費金額，處以四倍至十倍罰鍰，不適用勞工保險條例第七十二條第一項有關罰鍰之規定。但勞工因職業災害致死亡或身體遺存障害適合勞工保險給付標準表第一等級至第十等級規定之項目者，處以第六條補助金額之相同額度之罰鍰。	第三十四條　依法應為所屬勞工辦理加入勞工保險而未辦理之雇主，其勞工發生職業災害事故者，按僱用之日至事故發生之日應負擔之保險費金額，處以四倍至十倍罰鍰，不適用勞工保險條例第七十二條第一項有關罰鍰之規定。但勞工因職業災害致死亡或身體遺存障害適合勞工保險給付標準表第一等級至第十等級規定之項目者，處以第六條補助金額之相同額度之罰鍰。	條次變更。
第四十一條　依本法所處之罰鍰，經限期繳納，屆期仍不繳納者，依法強制執行。	第三十五條　依本法所處之罰鍰，經限期繳納，屆期仍不繳納者，依法強制執行。	條次變更。
第七章　附則	第七章　附則	章次變更。
第四十二條　勞工保險局辦理本法規定事項有關單據及業務收支，均免課稅捐。	第三十六條　勞工保險局辦理本法規定事項有關單據及業務收支，均免課稅捐。	條次變更。
第四十三條　勞工保險局辦理本法有關事項，得設審查委員會。 前項委員會組織、職掌等，由中央主管機關定之。	第三十七條　勞工保險局辦理本法有關事項，得設審查委員會。 前項委員會組織、職掌等，由中央主管機關定之。	條次變更。
第四十四條　本法第十條及第二十二條所定補助，經勞工保險局審核後，應提請職業災害保護專款管理委員會審議。 職業災害保護專款管理委員會審議前項補助時，應邀請衛生及職業訓練主管關代表、職業疾病專門醫師、職業災害勞工團體代表及職業安全衛生專家等列席。	第三十八條　本法第十條及第二十條所定補助，經勞工保險局審核後，應提請勞工保險監理委員會審議。 勞工保險監理委員會審議前項補助時，應邀請衛生及職業訓練主管關代表、職業疾病專門醫師、職業災害勞工團體代表及職業安全衛生專家等列席。	條次變更。
	第三十九條　政府應建立工殤紀念碑，定每年四月二十八日為工殤日，推動勞工安全衛生教育。	條次變更。
第四十六條　本法施行細則，由	第四十條　本法施行細則，由中央	條次變更。

中央主管機關定之。	主管機關定之。	
第四十七條　本法自公布日施行。	第四十一條　本法自中華民國九十一年四月二十八日起施行。	一、條次變更。 二、施行日。

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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Ninth session

SUMMARY RECORD OF THE 25th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 23 November 1993, at 3 p.m.

Chairperson: Mr. ALSTON

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GE.93-19521 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS (agenda item 4) (continued)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of New Zealand concerning articles 1 to 15 (continued) (E/1990/5/Add.5; HRI/CORE/1/Add.33; E/C.12/WG/1992/CRP.6/Rev.1)

1. The CHAIRPERSON invited the delegation of New Zealand to reply to the questions put at the previous meeting in connection with the implementation of article 6 of the Covenant.

2. Mr. BEEBY (New Zealand) referred to the apparent discrimination discerned by one member of the Committee in New Zealand's immigration policy, some specific provisions of which were favourable towards citizens of certain countries. Although it was true that there were specific arrangements for citizens of countries in the South Pacific, anybody, regardless of his nationality, could apply to immigrate to New Zealand. The legislation specified various categories of applicant, and gave particular importance to refugees, within the framework of family reunion. There was a set of criteria whereby the capacity of applicants for immigration to integrate into their host society could be assessed; for instance, a minimum knowledge of English was required. All the world's countries were currently represented among immigrants, with a marked increase for the Asian countries.

3. As for the reservations expressed by New Zealand in respect of the Covenant, he recognized that their withdrawal was not a priority for the Government of New Zealand; however, the matter had been raised at a high level and would be considered in due course.

4. The question of whether doctors, health workers, garbage collectors and gravediggers had the right to strike had been raised. The right to strike was guaranteed for all in New Zealand, subject to notice varying in length (from 3 to 14 days), depending on the importance of the service concerned. The work of doctors and all those involved in running hospitals, including psychiatric hospitals, was considered an essential public service; that was not, however, the case with either gravediggers or garbage collectors, although in the case of the latter the question was open to debate.

5. In reply to the question concerning the religious composition of New Zealand, the members of the Committee had been provided with a detailed table on the subject. Similarly, copies of the Human Rights Commission Act were available for those members who had asked specific questions about it. He believed that he had thus concluded the replies to the questions raised in connection with article 6 of the Covenant.

6. The CHAIRPERSON invited the representative of New Zealand to reply to questions on article 7 of the Covenant, concerning the right to just and favourable conditions of work (list of issues, paras. 20 to 24).

7. Mr. BEEBY (New Zealand) said that there was a statutory minimum wage, applicable to all employees aged over 20, in order to guarantee workers an equitable salary and a decent existence for them and their family. There were also statutory minimum conditions of employment (annual leave, sick leave, leave for bereavement or for personal reasons, equal pay for men and women, parental leave and protection against unauthorized deductions from wages). Those minimal conditions applied to all, without any distinction. In the case of people earning low wages with dependents, the law guaranteed a minimum net family income of $NZ 14,810 per year. Family allowances were also paid to low- and middle-income families, for each dependent child. Entitlement was income tested.

8. On the question of measures to eliminate wage discrimination against women, he recognized that despite a number of legislative prohibitions on gender-discrimination, including the Equal Pay Act, the Employment Contracts Act and the Human Rights Commission Act, there were still wage disparities, not all of which could be objectively justified. The Government was closely monitoring the situation and was keen to progress towards equal employment opportunities and equal remuneration between men and women and other groups identified as disadvantaged on the labour market. It had developed an evaluation kit to allow employers to measure the different job categories held by men and women.

9. As for statutory protection in the fields of occupational health and safety, over 95 per cent of the workforce was covered by the Health and Safety in Employment Act 1992, which had come into effect on 1 April 1993, with the exception of the crews of ships and aircraft, who were covered by special legislation applicable to civil aviation and the merchant navy, which was due to be amended to incorporate all the provisions of the 1992 Act. To ensure compliance with its provisions, the Act provided for the appointment of inspectors, authorized to enter and inspect any place of work and to take samples of any material or substances in the place of work, and of departmental medical practitioners, who could suspend people from specific work activities. Inspectors could adopt measures ranging from advice to prosecution. They were required to inform and train employers, employees and any other persons concerned by safety. They could issue improvement and prohibition notices, and if necessary, prosecute offenders. The courts could impose fines and prison sentences of up to one year. Employers were required to report all accidents resulting in serious harm, which could then be investigated by inspectors.

10. The Human Rights Commission Act and the Race Relations Act prohibited all forms of discrimination in the hiring or firing, training or promotion of women because of their sex or marital status; marital status had been added to the grounds on which discrimination was prohibited by the Human Rights Act 1993, which would replace the two former Acts as from 1 February 1994. Employees could lodge complaints on the basis of either Act, or under the personal grievance procedure contained in the Employment Contracts Act, if they wished to complain of discrimination or sexual harassment.

11. In the public sector, the State Sector Act required each government department to implement an equal employment opportunities programme to ensure equal opportunities in employment. The programmes included training for

managers in the recruitment, selection and promotion of women and the introduction of measures to ensure equality of opportunity in human resource policies. The resources of the main public-sector agency responsible for promoting those programmes had recently been increased.

12. In order to promote equal opportunities in employment in the private sector, the Government had set up a joint public/private sector body, the Equal Employment Opportunities Trust (EEO), financed by a special fund, which was responsible for research into, development and promotion of equal opportunity policies and practices.

13. Although the rate of male unemployment had been higher than the female rate since 1989, representing a reversal of the trend, it was mainly because most of the job losses between 1989 and March 1992 had been in male-dominated occupations which had been heavily affected by restructuring and disinflation; manufacturing, construction and transport, where males comprised two thirds of the total labour force. In contrast, total employment had increased in the financial sector, in which men and women were almost equally represented, and in the community and personal services sector, which was heavily dominated by women.

14. Mr. SIMMA thanked the delegation of New Zealand for its explanations concerning the implementation of article 7, but wished to revert to article 6, and more particularly to the question of the possible discrimination in the exclusion of women from employment in combat. He wondered why New Zealand had entered reservations to the Convention on the Elimination of All Forms of Discrimination against Women, but had not seen fit to do so in respect of the Covenant which, however, contained two provisions that specifically concerned non-discrimination.

15. He would also like to know whether the composition of the Human Rights Commission had been changed since the introduction of the major overall reforms.

16. Turning to article 7 of the Covenant, he observed, from document E/1994/5, that the ILO Committee of Experts had noted that the minimum wage rate had not been changed since September 1990. An indication of the rate of inflation in New Zealand would be useful in order to determine whether the wages freeze affected the population's standard of living.

17. As ILO Conventions No. 42 (Occupational diseases) and 17 (Workmen's compensation (accidents)) could be considered identical in spirit to article 7 of the Covenant, he expressed his concern that, according to the ILO Committee of Experts, the burden of proof lay with a worker who claimed to be suffering from an occupational disease. If that were the case, it would be incompatible with the spirit of article 7 of the Covenant. The same observation held for the statutory requirement in New Zealand for the victims of an industrial accident to bear part of the cost of medical treatment.

18. Mr. CEAUSU, referring to article 6 of the Covenant, noted in paragraph 39 of the report (E/1990/5/Add.5) that the minimum age for workers was 15, in practical terms, a fact which raised the question whether so early an age was not incompatible with the right to education; the point was all the more

important as table 6 showed that some 300,000 young people aged from 15 to 19 were in the labour force. He also asked what the racial breakdown of that population was, as it appeared that a far higher number of young Maori left school before completing their secondary education. In the same connection, he would like to know why "unemployment is a particularly acute problem for Maoris", as was stated in paragraph 56.

19. The technical and vocational guidance and training programmes described in paragraph 73 of the report should be commended, although one might ask in what circumstances a child aged under 15 could be authorized to leave school in order to attend an ACCESS course (para. 78) whereas it would undoubtedly be preferable for him to continue his studies.

20. In respect of protection against arbitrary dismissal, he asked whether it was possible for an official who had been dismissed to appeal to the courts against the decision concerning him which he deemed to be unlawful.

21. Mr. BADAWI asked, with regard to the Private Schools Conditional Integration Act, whether there were any schools that were not integrated and whether there were any private ethnic schools; if so, he asked how many there were and whether they were integrated.

22. He also asked what were the deadlines for submission of a complaint to the Human Rights Commission or the Race Relations Conciliator under the procedure described in paragraph 66 of the core document (HRI/CORE/1/Add.33).

23. Mrs. JIMÉNEZ BUTRAGUEÑO associated herself with all the earlier questions and asked for details of the minimum conditions of employment, referred to by the representative of New Zealand, in connection with article 7. She also asked whether a wage scale had been set for workers under the age of 20, as recommended by the ILO Committee of Experts.

24. Lastly, she asked what the potential practical implications for the living conditions of the population of the planned reduction in benefits under the new Industrial Accidents Act.

25. Mrs. BONOAN-DANDAN said that she was disappointed by the vague reply given by the representative of New Zealand concerning inequality of wages for women. She would have liked to know what such discrimination signified, which jobs were affected and what measures had been taken to eliminate it.

26. Mrs. HODGES-AEBERHARD (International Labour Organisation) said that in its 1992 report, the Committee of Experts had asked the Government of New Zealand to give details of the impact of the new legislation, i.e. the Employment Contracts Act, on rates of pay.

27. Mr. SIMMA asked whether the new legislation was mandatory, in view of its provisions authorizing arrangements reached by mutual agreement between employers and employees.

28. Mr. BEEBY (New Zealand) said that the question of the consequences of the reform of labour legislation and of the new Industrial Accidents Act on the living conditions of the population required additional research. The same

applied to certain requests for details on the implementation of ILO Convention No. 26. In reply to Mr. Badawi's question, he said that there were still schools that had not been integrated as well as ethnic private schools, particularly for Maori. He added that a written reply would be sent to answer Mrs. Bonoan-Dandan's question about possible wage discrimination against women.

29. The CHAIRPERSON invited the representative of New Zealand to reply to the questions on article 8.

30. Mr. BEEBY (New Zealand) said, in relation to issue No. 25, that New Zealand had a policy of not ratifying a convention unless it could be satisfied that it already fully complied, both in law and practice, with its requirements. It had not ratified ILO Conventions Nos. 87 and 98 and did not consider that such ratification was necessary in order fully to comply with the provisions of article 8. States parties to Convention No. 98 were required to favour collective bargaining. However, under the Employment Contracts Act, it was for the parties concerned to determine whether an employment contract was to be negotiated individually or collectively. The Act also gave employers and employees the right to be represented and to choose their representatives. It had removed most of the hurdles to ratification of Convention No. 87, although the interpretation of the Convention also posed practical problems that had not been solved. For example, ILO considered that the promotion of collective bargaining, the role of workers' organizations and freedom of association were all closely linked. The philosophy behind the Employment Contracts Act in relation to individual and collective bargaining might therefore be a potential obstacle to the ratification of Convention No. 87 as well as of Convention No. 98. However, New Zealand intended to evaluate the practical consequences of the new Act with a view to ratifying the Conventions.

31. With regard to issue No. 12, the Employment Contracts Act had strengthened the protection of salaried workers, particularly with regard to freedom of association, annual leave, bank holidays and sick leave, access to appeal procedure and to special jurisdictions responsible for enforcing contracts of employment, such as the Employment Tribunal and the Employment Court. Other legislation contained additional protection guaranteeing, in particular, minimum remuneration for employees aged under 20, parental leave, equal wages for men and women and protection against unauthorized deductions.

32. With regard to issue No. 26, New Zealand considered that the provisions of the Employment Contracts Act were compatible with those of articles 7 and 8 of the Covenant, as the Act was neutral in respect of collective bargaining, which it sought neither to promote nor to reduce. Moreover, it guaranteed equal wages for all workers, regardless of whether they were on individual or collective contracts of employment. It authorized the negotiation of such matters as occupational health and safety provisions, provided that applicable legislative requirements were met, and participation in strikes or lock-outs provided they were justified on the grounds of health and safety. It prohibited any form of discrimination in employment, particularly in respect of promotion, and guaranteed all workers who had worked for 6 months the right to 11 paid public holidays and 5 days' special leave with pay during the following 12 months, in addition to 3 weeks' paid annual leave. The

Employment Contracts Act also guaranteed freedom of association and voluntary union membership and set out the circumstances in which strikes were lawful. In any case, all employees could ask the Employment Court to settle a dispute concerning the right to strike, lock-out and trade union membership, and he specified that any strike or lock-out that did not concern conditions of hygiene or safety was unlawful unless it was motivated by the negotiation of a collective contract for the employees concerned.

33. The CHAIRPERSON invited the members of the Committee to put questions to the representative of New Zealand.

34. Mr. CEAUSU asked why it was stated, at the beginning of paragraph 184 of the French version of the report by New Zealand, that "tout travailleur a la faculté de s'affilier à un syndicat" and not that he had the right to do so, as was required by article 8 of the Covenant. In addition, the obligation, under the Labour Relations Act, for trade unions to have a minimum of 1,000 members appeared to be a restriction on the right of workers to form trade unions. He would like to know the view of the representative of ILO on that point.

35. Mr. BEEBY (New Zealand) pointed out that the questions put in connection with paragraphs 184, 192 and 193 of the report concerned the Labour Relations Act 1987, which had subsequently been abrogated and replaced by the Employment Contracts Act 1991.

36. The CHAIRPERSON invited the representative of New Zealand to reply to the questions on article 9 of the Covenant, concerning the right to social security.

37. Mr. BEEBY (New Zealand), in reply to the question concerning the measures taken to implement the principles proclaimed in 1972 by a Royal Commission in order to equalize the standard of living of the population, said that only unemployment benefit rates for single persons aged from 20 to 24 had been reduced by 24.7 per cent; the figure for other categories ranged from 3.1 per cent to 12.8 per cent. The aim was to restore a reasonable gap between the level of unemployment benefits and that of the lowest wages, as the wages freeze in force since the 1980s and the adjustment of benefits to keep track of the cost of living had so narrowed the gap that there was no longer any incentive for recipients to seek employment. In 1972 the Royal Commission had no idea that the amount of benefits might one day occasionally exceed the level of the lowest wages. The reduction in benefit rates had been accompanied by greater funding of "supplementary programmes" which had topped up the basic benefits to the level of actual cost. Since 1991, there had been two increases in benefits.

38. As for the six-month stand-down that applied to certain persons before they received unemployment benefit, he explained that persons who surrendered employment without good and sufficient reason, who refused a second offer of suitable employment or refused to take part in a training course on an employment scheme were considered as "voluntarily unemployed". They could receive limited assistance to meet the needs of their dependents, provided they demonstrated a genuine change in attitude.

39. The CHAIRPERSON asked the representative of New Zealand to reply to the questions concerning protection of the family, mothers and children (art. 10 of the Covenant).

40. Mr. BEEBY (New Zealand) said that in New Zealand society the term family usually meant a group of people linked by kinship ties or close affective relationships such as marriage. Social assistance programmes employed the concept of "core" family, which could be defined as a single adult, a single adult with children, a married couple without children or a married couple with children. As a result of recent social evolution, there were currently the following main types of family: families composed of two adults (with or without children), single-parent families, reconstituted families and families with more than two generations living in the same household. The number of single-parent families had increased most in recent years. The increased significance of the extended family network, particularly, but by no means exclusively, among the Maori and Pacific Island peoples had also been noted.

41. Regarding the age at which children were deemed to attain their majority, he said that under the Age of Majority Act 1970 all persons attained full age on reaching 20. Although persons could make fully enforceable contracts at the age of 18, the courts could in certain circumstances decline to enforce them. Marriage was authorized from the age of 16 with parental consent or, in the case of refusal, with the consent of a family court. Citizens could vote at 18. Offences were tried by the adult criminal justice system from the age of 17. The minimum qualifying age for unemployment benefit and single-parent benefit was 18.

42. Regarding children in paid employment, he said that no data were available on the employment of young people aged under 15, although it was customary for some schoolchildren to take on small part-time jobs or to assist in family businesses. Since the compulsory school-leaving age had been raised to 16, no one under 16 could work during school hours or in any circumstances which interfered with their schooling. An estimated 98,300 15-19 year olds were in employment in the first quarter of 1993, representing approximately 36.5 per cent of that age group, and 30,300 young people aged from 15 to 19 were unemployed and actively seeking work.

43. Regarding the Minimum Wage Act, he recognized that the Act did not apply to workers aged under 20. Successive Governments had not introduced a minimum youth wage on the grounds that young people were already less likely to get work than older people because they lacked work experience, required training and had a higher turnover rate. Prescribing minimum wages for young people was therefore likely to further discourage employers from employing them and to reduce their opportunities for gaining work experience. However, the Government had recognized that it would be reasonable to accept that a young person under the age of 20 had good and sufficient reason for declining a job offer if it paid less than his or her basic unemployment benefit, job search allowance or training benefit, plus $NZ15 a week. All other statutory minimum conditions applied to all employees, regardless of age.

44. On the question of possible discrimination in the measures of protection and assistance provided by the State, he said that the Government of New Zealand did not believe that there were any groups of children and young

persons who were significantly less protected and assisted than the majority. Paragraphs 331 to 340 of the report gave details of the assistance for handicapped children and protection against exploitation, neglect and cruelty. Persons entrusted with orphans and abandoned children received allowances if the natural or adoptive parents had died or were unable to care for the child.

45. With regard to issue No. 34, he said that the Department of Social Welfare advised the Government whenever it appeared that there were difficulties about the provision of the care for children referred to under issue No. 33.

46. Regarding issue No. 35, he said that as a developed country, New Zealand in principle had no need of international assistance for the realization of the right set forth in article 10 of the Covenant.

47. Mr. GRISSA asked to whom was paid the domestic purpose benefit, referred to in a paper on article 9 distributed by the delegation of New Zealand.

48. Mr. BEEBY (New Zealand) said that the benefit was paid to persons on their own caring for children or invalids.

49. Mr. MUTERAHEJURU asked the delegation to explain the meaning of the word "family" in New Zealand society. The word appeared to cover a wide variety of situations ranging from the single-parent family to the extended family (see report, para. 328).

50. He inquired whether the fact that all children, regardless of whether they were natural or legitimate, were henceforth equal before the law (report, para. 310) affected marriage as an institution and the cohesion of the family. He asked whether there was any tension between natural and legitimate children.

51. He asked whether the parental leave, referred to in paragraph 303 of the report, was regarded as leave for the purposes of the Labour Code, as it was not paid.

52. The CHAIRPERSON said that in one of its general comments, the Committee had observed that the concept of the family could vary from one country to another, or even within a single country.

53. Mr. TEXIER asked whether the judges who sat on the Youth Court, mentioned in paragraph 329 of the report, had received special training, whether they were assisted by social workers and if they were competent to try both civil and criminal cases.

54. He asked whether, in the case of a divorce, the judges vested parental responsibility in both parents, regardless of their respective faults.

55. Mr. GRISSA asked for details of the protection for the rights of children who had been abandoned by their mother or whose mother was not able to bring them up.

56. The CHAIRPERSON invited the delegation of New Zealand to reply to issues Nos. 36 to 39 concerning the right to an adequate standard of living (art. 11 of the Covenant).

57. Mr. BEEBY (New Zealand) said that there were no data on the per capita GNP of the poorest 40 per cent of the population. He said, however, that 40 per cent of wage earners received under $NZ 25,500 per year and that one wage earner out of five earned less than $NZ 18,800 per year; per capita GNP was $NZ 21,190 in the year ending March 1992.

58. There was no official poverty line in New Zealand. However, the Government ensured that everyone enjoyed an adequate standard of living. Thus, for example, there was a guaranteed minimum family income and minimum old age benefit. Families in need could also receive emergency assistance.

59. Regarding issue No. 37, concerning malnutrition, he said that instances of hunger had recently been reported in low-income sectors of the population but that assistance programmes had been introduced for the most vulnerable, particularly the elderly, the unemployed, the disabled, the sick and people on their own who had to care for children or sick relatives.

60. On the question of food aid, referred to in issue No. 38, he pointed out that in the last three years the number of persons applying to voluntarily run food banks had increased significantly. However, the number was small in comparison with the 850,000 families and individuals who received State financial support. Thus, from May 1992 to June 1993 the amount of special needs grants for food amounted to $NZ 11,600,000.

61. Referring to issue No. 39, which concerned the homeless and the inadequately housed, he said that there were no statistics on the homeless, but that in terms of international standards, New Zealanders were well housed. According to the 1991 census, 74 per cent of households owned their flat or house.

62. There were few homes without electricity, drinking water or a bathroom. However, according to the 1991 census, 16,554 households lacked heating. There were more than two persons per bedroom in approximately 2 per cent of housing. There were a few substandard dwellings (approximately 250). They were essentially in isolated rural areas on the east coast. The number of "illegal" dwellings was also very small.

63. As far as tenants were concerned, the Residential Tenancies Act protected them against arbitrary eviction. The Act stipulated that only the Tenancy Tribunal could order an eviction, provided it had been established that the tenant had seriously violated the terms of the lease. Between May 1991 and June 1992 the Tenancy Tribunal had dealt with 26,600 cases, 18,400 of which had been settled by mediation. There were no statistics on the number of evictions ordered over the previous five years.

64. Since 1 July 1993 persons on low incomes who could not meet their housing expenditure could apply for an accommodation supplement.

65. Mr. SIMMA asked which persons were in need of food parcels.

66. Mr. TEXIER asked whether there was a rent-controlled housing sector reserved for the poorest sectors of the population.

67. The CHAIRPERSON invited the delegation of New Zealand to reply to issues Nos. 40 to 43 concerning the right to physical and mental health (art. 12 of the Covenant).

68. Mr. BEEBY said, with regard to issue No. 40, concerning basic legal protection for persons with mental or physical disabilities, that the Human Rights Act 1993, which would enter into force on 1 February 1994, provided extensive protection for such persons.

69. He added that the Mental Health Act 1992 also protected the rights and dignity of persons who were required to accept treatment. The Act in particular specified the appeal procedure available to those patients.

70. Regarding the impact of changes in income distribution over the previous decade on access by the poorest members of the community to health care (issue No. 41) he said that low-income families had always encountered difficulties in receiving the health care they required, and that the policies adopted recently were designed to address precisely that problem. The new system of benefits was more closely targeted to actual needs; health care and services, including home visits by practitioners and pharmaceutical items were more widely subsidized in the case of low-income families, who were also exempt from contributing to the cost of out-patient hospital care. Persons suffering from chronic illnesses who made extensive use of health services were entitled to free hospital care and to the same subsidy on prescriptions and doctors' visits as low-income earners. Those changes, in conjunction with others, were designed to ensure that the best possible use was made of resources in the health sector and that all, regardless of income, had access to a comprehensive range of health services.

71. Turning to issue No. 42, he said that there was a high level of public participation in the determination of health policy. The Government's health policy statement was based in part on consultation between the public and a task force. The population had also been invited to give its view on important parts of the health reforms in 1991, i.e. core health services and funding for health care, and had opposed the privatization of health care. Core health services and disability support services should reflect the diverse needs and the values of the population being serviced. For that reason, a national committee had been charged with consulting both the public and health professionals about the range of services currently provided. In addition, regional health authorities also had to consult widely with their communities on the type of service to be provided, access to the services and disability or invalidity services. The Minister of Health, the Core Services Committee and the Public Health Commission were striving to establish ongoing consultation processes and research to make more detailed assessment of the priorities and strategies for the public health system. The 1993 Act which reformed the public funding of health and disability services in New Zealand had gone through due parliamentary process, in which the public had been involved through committees.

72. The ratio of hospital beds per 1,000 inhabitants (issue No. 43) reflected a decline in the number of in-patients and an increase in out-patients (56,724 people treated as out-patients in 1989 against 87,574 in 1991). The trend reflected advances in medical technology, which no longer required long hospital stays, as well as greater use of community-based care. The same was true of mental health services: long-term custodial care was gradually giving way to short-term care and out-patient community treatment and care.

73. Mr. BADAWI took it that the recently adopted health policies were designed to improve the quality of existing health care while keeping expenditure on public health at a minimum. He asked the representative of New Zealand to confirm that.

74. Mr. ALVAREZ VITA said that at the previous meeting he had asked a number of questions on different parts of New Zealand's report and inquired whether Mr. Beeby intended to reply immediately or after having dealt with all the points on the list of issues.

75. The CHAIRPERSON invited the representative of New Zealand to reply to the questions asked orally.

76. Mr. BEEBY (New Zealand) said that he had already begun to reply to some of the questions asked by Mr. Alvarez Vita and that he would reply later to all the points raised by him, when he had had time to consider them more closely. In answer to the point raised by Mr. Badawi, he confirmed that the recent health policy reforms were designed to introduce a system of better quality services that were accessible to all. However, the authorities had never believed that it would be possible to improve services without increasing public-sector health expenditure: in fact, health expenditure would certainly continue to rise.

Article 13

77. Mr. BEEBY (New Zealand) explained that although 90 per cent of private schools were controlled by Roman Catholic education authorities (issue No. 44), that was because of the size of the Roman Catholic community in New Zealand and of the importance many Roman Catholics attached to a religious education for their children. He referred to paragraph 695 of the report (E/1990/5/Add.5), and explained that the private schools "integrated into the State system" undertook to teach the same core curriculum as the public schools, in exchange for which the State met in full their operating costs; that arrangement neither prevented them from also providing teaching appropriate to their specific nature - such as religious education in Catholic schools, nor infringed their administrative independence.

78. Regarding issue No. 45, he said that the Education Act 1989, referred to in paragraph 599 of the report had been amended in several respects in the period since the report, in particular as regards the definition of "foreign students" and the regime applicable to them. The term "foreign student" currently designated anyone who was not a New Zealand citizen, who did not possess the status of a resident under the Immigration Act, who was not exempted from the relevant provisions of the Act and who was not a member of a category of persons to whom the regime of "foreign students" did not apply, by

decision of the Minister of Education. All other students, including refugees granted a permit under the Immigration Act, were entitled to free primary and secondary education. In short, "foreigners" were those persons who had applied for an entry visa in order to follow higher education in New Zealand, which was considered to be of high quality and cheaper than in many other countries.

79. As for access to higher education (issue No. 46) he said that the New Zealand authorities had recently introduced a number of reforms designed to increase access to higher education, the effect of which had been to expand funded places by almost 50 per cent over the previous five years. The number of full-time students had increased from approximately 84,000 to over 126,000 between 1987 and 1992. Students had indeed been required to make an increased contribution to tuition costs, but the principle of free higher education was not threatened, as the State continued to fund approximately 85 per cent of the actual tuition cost through tuition subsidies. In addition, in 1992 a loan scheme had been introduced to assist students in financing their higher education. A means test was applied for students under 25 in order to provide greater assistance to students from low-income families.

80. Despite the increase in tuition fees, the number of enrolments in higher education establishments had increased sharply over the previous five years. Of the 202,143 students enrolled in 1993, 51 per cent were women, 29 per cent persons aged over 25 and 14 per cent persons aged over 40. The ratio of Maori students in universities had risen from approximately 3.8 per cent in 1987 to 7 per cent in 1991; in 1992, 9 per cent of higher education students as a whole were Maori and 2.4 per cent were members of Pacific Island ethnic groups. The Government had also decided to increase the rate of tuition subsidy for students in their first year of higher education in order to encourage young people to continue their education. It could therefore be concluded that higher education, as a whole, was accessible to all, regardless of age and sex (issue No. 47).

81. In reply to the question raised under issue No. 48, he drew the Committee's attention to the document comparing remuneration and salaries, distributed to the members of the Committee in the meeting room, and pointed out that between 1981 and 1986 the average remuneration of teachers had risen in comparison to that of the civil servants for whom data were available; during the period under review, the remuneration of male secondary school teachers had risen from 89 per cent to 98 per cent of the average salary for the selected occupations, and that of female primary school teachers from 73 per cent to 88 per cent. In contrast, the salary of female pre-school teachers had fallen to half the average salary of women in civil-service occupations. According to 1991 statistics, the average salary of teachers ranged from approximately $NZ 28,000 for kindergarten teachers to over $NZ 42,000 for secondary school teachers. Teachers' salaries were not considered inadequate in comparison with those of other sectors within the labour force, and there were no programmes to improve the standard of living of teachers. No overall increase in teachers' salaries had been negotiated since 1990, as the rate of inflation was very low.

82. Lastly, in connection with issue No. 49, he said that as New Zealand was a developed country, it did not normally expect to receive international assistance to realize the right to education.

83. Mr. SIMMA, referring to the table comparing teachers' salaries to those of other civil service occupational groups, expressed surprise that in 1981 a male pre-school teacher had been able to earn twice as much as his female colleague and more than a secondary school teacher: he wondered whether there was not a statistical error. In addition, there was still a gap between the average salary of men and women; he asked whether that meant that different scales applied, depending on sex.

84. Mr. GRISSA noted the same incongruity and asked for details of the cost of studies. In particular, he asked for details of the tuition costs and other fees paid by New Zealand students and foreign students.

85. Mr. CEAUSU asked for details of article 7 of the Immigration Act, referred to in paragraph 599 of the report (E/1990/5/Add.5), and for specific examples of the application of article 4 of the Act, pursuant to which foreign students were in some cases entitled to enrol in public schools, and once enrolled, authorized to remain enrolled like any other person. He also asked whether the children of diplomatic and consular staff were entitled to free primary education in New Zealand.

86. Mrs. BONOAN-DANDAN, also referred to the table comparing salaries and noted that there was still a gap between men's salaries and those of women, except in the case of members of Parliament, and asked what measures had been adopted or were planned to eliminate wage inequality.

87. Mrs. JIMÉNEZ BUTRAGUEÑO asked whether grants were solely awarded on the basis of family income or if school performance was also taken into account. She also asked whether any measures had been adopted to simplify access by adults to education, either in the form of literacy programmes or of lifelong education for persons encountering difficulties in keeping a job. She further asked whether there were any measures to facilitate the access of the elderly to higher education and inquired what the impact of any such programmes and measures had been.

88. The CHAIRPERSON invited the representative of New Zealand to reply to the questions put orally.

89. Mr. BEEBY (New Zealand) said that he would provide as complete a reply as possible to all the questions put by Mr. Alvarez Vita, and by the other experts at a later date. Regarding the point raised by Mr. Simma, he explained that the wages scale in education applied regardless of sex and that the gaps that appeared were undoubtedly attributable to the fact that men had been promoted faster than women. He confirmed that the children of diplomatic and consular staff were entitled to attend public schools free of charge. He said that he would reply to the other questions put by the experts at a later date.

90. Mr. SIMMA said that the details provided by the representative of New Zealand undoubtedly accounted for the gap between male and female salaries, but failed to explain the surge in the remuneration of female parliamentarians between 1981 and 1986. He also asked for details of the change in the rate of inflation in comparison to the minimum wage.

91. Mr. HUNT (New Zealand) said that the rate of inflation had remained relatively high until the end of the 1980s, when it had been between 10 and 20 per cent; in contrast, it had fallen sharply since 1990, and had been merely 0.8 per cent in May 1992 and 1 per cent in May 1993.

92. Mr. BEEBY (New Zealand) said that the current equality in the remuneration of parliamentarians meant that there were far more female parliamentarians and ministers than in 1981. The gap between the remuneration of parliamentarians and that of other civil service employees was undoubtedly attributable to the fact that nowadays there were more ministers than before. Lastly, the averages were somewhat distorted by the fact that the remuneration of ministers was far higher than that of other members of Parliament.

Article 15

93. Mr. BEEBY (New Zealand), referring to item No. 50, said that in recent years New Zealand had made considerable efforts to ensure that every member of society had not only the right, but also the opportunity to take part in cultural life. He referred to paragraphs 749 to 851 of the New Zealand report and added that the efforts had been reflected in an increase in the volume of publications, in particular of writing by Maori authors, and by the fact that New Zealand now had a film industry. In addition, broadcasts in Maori or focusing on Maori issues had increased, while the question of funding for cultural activities given Maori status under the Treaty of Waitangi was currently under consideration.

The meeting rose at 6.05 p.m.

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Eighty-fourth session

SUMMARY RECORD OF THE 2282nd MEETING

Held at the Palais Wilson, Geneva,
on Monday, 11 July 2005, at 3 p.m.

Chairperson: Ms. CHANET

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT AND OF COUNTRY SITUATIONS

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT AND OF COUNTRY SITUATIONS (agenda item 6)

Fourth periodic report of Yemen (CCPR/C/YEM/2004/4; CCPR/C/84/L/YEM; HRI/CORE/1/Add.115)

1. At the invitation of the Chairperson, the members of the delegation of Yemen took places at the Committee table.

2. Mr. KAHTAN (Yemen), introducing the fourth periodic report of Yemen (CCPR/C/YEM/2004/4), said that the unification of his country in 1990 and the concurrent introduction of human rights-based legislation had been major turning points in the promotion and protection of human rights in Yemen. The most important political development since then had been the holding of the first municipal elections in 2001, which had enhanced public participation in policy-making at the local level. Women played an active role in political life and had accounted for 42 per cent of voters in the 2003 parliamentary elections.

3. His Government also promoted plurality in the media; each political party had its own publication. Amendments to the Press and Publications Act were currently under review. In accordance with those amendments, journalists would no longer be liable to imprisonment for expressing their opinion. Legislation was also being vetted with a view to eliminating provisions that discriminated against women and thus ensuring their full participation in all areas of activity. In that regard, the Council of Ministers was currently discussing amendments to a large number of legal provisions in order to bring national legislation into line with the relevant international instruments.

4. With the support of the international community, the Government had implemented a series of educational and awareness programmes with the aim of promoting a human rights culture. Furthermore, a human rights databank had been set up, and efforts were being made to strengthen links with civil society and to develop further human rights-related programmes and activities.

5. Although considerable progress had been made in the field of human rights, inadequate local capacities and resources represented a considerable obstacle, and the support of the international community was crucial. Support for development, for example in the areas of health and education, would contribute to laying a solid foundation for the enjoyment of all human rights. The comments and recommendations of the Human Rights Committee were also important tools for furthering human rights in Yemen.

6. The CHAIRPERSON invited the delegation to reply to questions 1 to 13 of the list of issues.

7. Mr. KAHTAN (Yemen) said that the preparation of the written replies to the Committee's list of issues had been problematic since only the English-language version of the document had been received. Local translation capacities were limited and his Government would appreciate it if, in future, an Arabic version of the list could be provided.

8. Human rights protection in Yemen was ensured at various levels. The provisions of the international instruments to which the country was a party were incorporated in national legislation. The rights to freedom of expression and freedom of association were enshrined in the Constitution. Remedies for any violations of those rights were available through the courts.

9. Several bodies within parliament were entrusted with the promotion and protection of human rights. The Public Freedoms and Human Rights Committee was mandated, inter alia, to ensure the harmonization of national legislation with Yemen's obligations under international instruments. It also investigated cases of human rights abuse and monitored respect for human rights within government institutions. The Petitions and Complaints Committee was competent to receive complaints of human rights violations, prepare reports on such incidents for submission to parliament, and ensure the follow-up and implementation of ensuing recommendations. The Consultative Council Public Rights and Freedoms Committee played an advisory role and was responsible for safeguarding the rights and freedoms of the media and civil-society organizations and for investigating alleged human rights violations. It was further entrusted with monitoring regional and international developments in the field of human rights and preparing reports. Those activities aimed at strengthening links between local and international organizations with a view to engaging in an exchange of relevant experience. Particular efforts were made to enhance the role of women, and a number of governmental institutions focused on promoting and protecting their rights.

10. With the establishment of the Committee on Political and Civil Human Rights in 1997, the Government had acquired its own human rights protection mechanism. In 1998, the Committee had been replaced by the Higher National Human Rights Committee, which was mandated to ensure the incorporation of the provisions of international instruments into domestic legislation and oversee their implementation. It also prepared reports to United Nations treaty-monitoring bodies. The Committee comprised representatives of the ministries concerned and received advice from representatives of various judicial organs. In 2001, the Government had established the Ministry of Human Rights.

11. Civil society played an important role in the promotion and protection of human rights, and its involvement was actively encouraged. Civil-society organizations fulfilled advisory functions vis-à-vis the Ministry of Human Rights and cooperated with the competent government bodies. Of the 4,000 or so NGOs operating in Yemen, over 50 worked in the field of human rights. NGOs organized workshops on issues such as the rights of women and children and the situation of prisoners.

12. Mr. ALYOUSOUFI (Yemen) said that the Ministry of Human Rights played a major role in investigating complaints of human rights violations submitted by citizens, organizations and institutions. Issues raised by organizations such as Amnesty International, which had in the past remained unanswered, were now formally addressed with the aim of formulating an adequate response.

13. His Government was also exploring the possibility of establishing an independent national human rights committee composed of representatives of civil society and the Government in conformity with the provisions of the Paris Principles relating to the status of national institutions for the promotion and protection of human rights.

14. Replying to question 3 of the list of issues, he said that several domestic legislative provisions enshrined the prohibition of discrimination based on sex. In particular, the Constitution stipulated that all citizens were equal before the law. Several other laws governing economic, social and cultural rights, employment rights, and the right to vote provided that women enjoyed the same rights as men. The Government was in the process of revising all legislation with the aim of removing any remaining obstacles to women's participation in political life.

15. Female genital mutilation occurred only in border areas of the country. The Government had made every effort to prevent that practice and had received no information on new cases. In order to ensure application of the current legislation, a proposal to amend the relevant law would be considered by parliament in August 2005.

16. Domestic legislation on polygamy was in conformity with the Covenant. It was based on Islamic sharia law and, as stipulated in article 5 of the 1993 Vienna Declaration and Programme of Action, the religious background of a State must be borne in mind.

17. The right of women to own property was enshrined in article 7 of the Constitution, which stipulated that economic activity should benefit all citizens. Several legislative provisions guaranteed the right of women and men to own property, including Act No. 14 of 2002, which specified that the owner of any property or article had the right of usufruct, regardless of gender.

18. Mr. MAHDI (Yemen), having thanked the civil-society representatives who were attending the meeting, emphasized that the aim of governmental and non-governmental organizations alike was to promote and protect human rights in Yemen. In response to question 7 of the list of issues, he reaffirmed that the principle of non-discrimination between men and women was enshrined in several domestic laws. The Government had implemented strategies and policies to improve the condition of women, to ensure their active participation in society, to enhance the level of education attained by women and girls, and to promote women's rights at all levels. Moreover, a decision adopted by the Council of Ministers in 2004 highlighted the right of women to be appointed to the office of judge.

19. In answer to question 8 on the value of witness statements, he said those statements were taken and assessed in accordance with sharia law, a practice that was largely in line with the provisions of the Covenant.

20. The national strategy to achieve gender equality in the public service was based on all the domestic legislation governing gender equality, to which reference had already been made. Any violations of that legislation were sanctioned. The National Women's Committee had proposed amendments to 26 laws, with the aim of increasing women's rights and achieving true gender equality.

21. The court that dealt with crimes of terrorism was a court of first instance. The public prosecutor was responsible for overseeing all prosecutions in that court. The crimes tried by the court included kidnapping of foreigners, piracy, wilful damage to oil pipelines and installations, theft of public property by armed organizations or individuals, wilful damage of public property and hostage-taking. The court tried both the perpetrators of such crimes and those who aided and abetted the perpetrators. Due process was ensured in accordance with the guarantees applied in other domestic courts.

22. Mr. KAHTAN (Yemen), responding to question 11 of the list of issues, said that the Supreme Court had sent that case back to the court of first instance in Aden, demanding that the evidence should be re-examined. In practice, sentences to death by stoning for adultery were rarely executed, given that four witnesses to the adultery were required. If a woman admitted her crime, the sentence was retracted. Sentences to death by stoning for adultery, while seldom applied, were in accordance with the provisions of sharia law.

23. His delegation could not comment on the case described in question 12 unless the Committee could clarify the identity of the individual who had been sentenced to death.

24. Yemen had not acceded to the second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. In accordance with the resolution of the Economic and Social Council on safeguards guaranteeing protection of the rights of those facing the death penalty (resolution 1984/50), there were many such safeguards in place in Yemen.

25. The CHAIRPERSON said that, while the list of issues had been issued in English, French and Spanish (the working languages of the Committee) in the first instance, the Arabic translation had been available as a public document since May 2005.

26. Mr. KÄLIN commended the reporting State for the early submission and detailed content of its fourth periodic report. The Committee would, however, appreciate more information in future on factors and difficulties that might affect implementation of the Covenant.

27. Turning to question 1 of the list of issues, he welcomed the State party's efforts to ensure comprehensive implementation of the Covenant. With particular regard to the role of the judiciary in ensuring domestic implementation of the Covenant, he wondered whether there had been any cases in which the Covenant had been invoked and applied by the courts since the 1998 case cited in the report (para. 24).

28. He also welcomed the establishment of institutions responsible for human rights issues, such as the Ministry of Human Rights and the National High Council on Human Rights, but stressed that, in accordance with the Paris Principles, it was essential that governmental organs be complemented by institutions such as an independent human rights commission (question 2) empowered to investigate human rights violations, including violations by State organs. He therefore requested more information on efforts to establish such an independent body and on when it could be expected to begin its work.

29. Much progress had been made in amending legislation to prohibit gender discrimination (question 3), yet according to numerous reports received, the real situation of women had not been affected. For example, there was only one woman member of parliament, fewer than 1 per cent of local council members were women, the illiteracy rate of women was over 60 per cent and the number of women in the judiciary had in fact decreased. Some laws still provided for different treatment for men and women: a foreign husband married to a Yemeni woman had to renew his residence permit every two years whereas a foreign woman married to a Yemeni man only had to renew her permit every five years; more than 80 per cent of the beneficiaries of the Social Insurance Act had been men. Serious problems therefore remained in the area of equal treatment for women. He stressed that it was important not only to amend laws but also to address factors which had a negative effect on women in society and vis-à-vis the administration. Specific measures should be adopted to prohibit sexual discrimination wherever it was found.

30. With regard to the court which dealt with crimes of terrorism (question 10), he wondered whether it was a court of first instance or an ad hoc court and whether its judges were from an existing chamber, had special status or included members of the armed forces. He also asked whether that court dealt exclusively with the crime of terrorism or membership of a terrorist group and, if so, how those crimes were defined.

31. Mr. GLÈLÈ AHANHANZO applauded the State party's efforts to modernize its legislation but questioned the degree to which those amendments had been implemented in practice. He requested further information on the prevalence of female genital mutilation (question 4) and efforts to eliminate that practice, including through education and awareness-raising activities, and on the results of such efforts. He also requested more information on how the practice of polygamy could be justified (question 5), including on religious grounds; that issue was related to the need to combat cultural and societal attitudes which promoted discrimination against women. A basic step towards improving the status of women would be to reduce illiteracy among women and ensure they had equal access to education. Finally, with regard to question 6, he requested further information on any legal guarantees of women's right to own property, and information on the number of businesswomen.

32. Mr. BHAGWATI said that although it was a positive step to have amended many laws with the aim of eliminating discrimination, the Committee needed more information on the practical implementation of those changes in order to assess the human rights situation. While progress appeared to have been made towards improving the status of women in the social, political and economic spheres, more needed to be done and the State party must devote greater attention to improving the situation of women, most of whom were illiterate and unaware of their rights and were therefore denied the opportunity to play an active role in their country. To that end, the State party had an obligation to address social and cultural attitudes which hindered progress towards equality for women, and to ensure that women received an equal and adequate education. Although women currently had the right to vote and to stand for public office, the removal of obstacles to their equal participation and improved education, including in relation to political issues, would help them take their rightful place in society.

33. He expressed concern about continuing inequality between men and women in marriage and requested information on whether men and women were equally free to enter into marriage, on whether there were different legal ages for marriage for men and women, on the divorce rate and whether a man could still divorce his wife by repeating three times publicly that he divorced her, and on whether men and women had equal inheritance rights. The State party should consider following the example of other countries, which had implemented special measures such as affirmative action to promote the status of women.

34. More information would be welcome on any steps envisaged to prohibit female genital mutilation (question 4) and when such steps might be taken, and on efforts to increase public awareness of the need to terminate that practice. He also requested information on: efforts to create an independent national human rights commission (question 2) in accordance with the Paris Principles, whether or not that process was being undertaken at the government level only, and whether the commission would be truly independent; how human rights guarantees under the Constitution and the Covenant were implemented, which authorities were responsible for them and their powers; and what remedies were available to citizens, including women, if they felt their human rights had been violated.

35. Mr. KHALIL, referring to question 11, welcomed the decision of the Supreme Court to order a retrial of the woman sentenced to death by stoning for adultery, although it was unfortunate that she would have to undergo the ordeal of a new trial and the possibility of the death sentence again being imposed. He requested confirmation that, as indicated in paragraph 174 of the report, no punishment of stoning had been applied for hundreds of years, and that, in accordance with the information provided in paragraphs 118 and 174, even if found guilty once again, the woman would have the right to apply for a pardon. He stressed that the right to life and the right to seek pardon or commutation of a death sentence were fundamental rights guaranteed under article 6, paragraphs 1 and 4, of the Covenant.

36. Turning to question 12, he said that he had information according to which the death sentence against the individual alleged to be schizophrenic had been upheld after review by the supreme judicial council and the sentence had been carried out in 2001. The case had in fact been the subject of an urgent appeal by the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/2003/3/Add.1, para. 561). He asked if the delegation could shed any more light on that case and on how that sentence could be justified in relation to article 6 of the Covenant. With regard to question 13, he recalled that in its concluding observations on the third periodic report of Yemen (CCPR/CO/75/YEM, para. 15), the Committee had already noted with concern that the offences punishable by the death penalty were not consistent with the requirements of the Covenant and that the right to seek a pardon was not guaranteed for all on an equal footing. Given the large number of individuals awaiting execution, he wondered whether the Government of Yemen had considered amending its legislation so as to reserve the death sentence for only the most serious crimes or even to abolish capital punishment entirely.

37. Mr. AMOR said that despite the difficult situation in Yemen, the Government had made considerable efforts to promote and protect human rights, and progress had been made in many areas. Cultural traditions were a particular obstacle to the full realization of human rights, since they were deeply rooted in society and therefore difficult to change, despite progress in policy and legislation. The report currently before the Committee emphasized the importance of the specific cultural and, in particular, religious characteristics of the State party. Those

characteristics should not, however, be used as an excuse for failure to respect human rights. The Vienna Declaration and Programme of Action should not be interpreted in a selective manner, and articles of the Covenant should not be considered in isolation from each other or out of context.

38. Although the Committee acknowledged and respected the historical and cultural context of women's rights in Yemen, that context should not be accepted as an obstacle to their full realization, since the Covenant was based on the concept of the universality of civil and political rights. Women's rights were recognized in every article of the Covenant, to which Yemen had not submitted any reservations. The religious character of Islam varied between Muslim countries since the Koran was open to a wide variety of interpretations. The Koran stated, for example, that a man could not enter into a polygamous marriage if he feared that there would be any inequality between his wives. That could be interpreted as a prohibition of polygamy, since no man could be sure that he would always treat his wives equally. Further information on the Yemeni interpretation of that verse of the Koran would be welcome.

39. He asked what information and education were available to women, and what measures were being taken to combat illiteracy. Illiteracy led to ignorance, which could result in women being subjugated to traditions that were considered unacceptable under international human rights standards. He wished to know how much, if any, religious extremism had been evinced in Yemen, and said that the Committee would appreciate any information on the use of religion as a political instrument.

40. Mr. O'FLAHERTY said that the issue of trafficking in persons had not been mentioned in the State party report. He requested information on the extent to which such trafficking posed a problem in Yemen, and on the Government's efforts to combat the phenomenon. He asked what measures the Government was taking to address the issue of Iraqi women being trafficked to Yemen by criminal syndicates, and how those women's rights were being defended. The Committee had received shocking information on the numbers of Yemeni children being trafficked to Saudi Arabia; according to UNICEF, they had totalled 50,000 in 2004. He asked whether that figure was accurate, and what measures the Government was taking to solve the problem. He wondered what measures were in place to protect children's rights, and whether the Government was running any programmes in cooperation with children's organizations such as UNICEF.

41. Sir Nigel RODLEY said that in accordance with the Covenant, freedom of religion was incontestable, but the freedom to manifest one's religion could be subject to limits in order to protect the fundamental rights and freedoms of others. Although the Committee accepted religious law as national law, no national law, be it religious or otherwise, could be invoked against international treaty law. According to the Committee's General Comment No. 31, a State could not invoke the provisions of its internal law as justification for its failure to perform a treaty. The issue at stake was therefore not whether religion could override a treaty, but rather whether the religion in question was compatible with that treaty.

42. On the issue of the use of the death penalty, he was concerned about how frequently it appeared to be possible to find the four witnesses, or extract the confessions, required to apply the law that allowed adulterous women to be sentenced to death by stoning. Although in certain cases the women concerned had been released, the fact that the practice continued to exist was

contrary to the right to life, and article 6 of the Covenant. Although the State party's legal and constitutional policy was not to execute a person who had committed a crime when under the age of 18, there appeared to be instances in which that policy was not applied. He had been informed of the case of 17-year-old Hafez Ibrahim, who had been sentenced to death for a murder he was alleged to have committed at the age of 16. He wished to know whether that sentence had been carried out and, if not, what was the current status of the case.

43. In crimes with political motivation, the serenity of justice could be called into question. The delegation should comment on the case of Yahya Al-Dailami, who had been sentenced to death for conspiracy with another country. Further information should be provided on the use of the death penalty in political cases. The Committee had been informed of the deaths of six men, who had been suspected of being members of Al-Qaida. The men had been driving a car that had been hit by a missile, in a joint operation by the Yemeni Government and United States security forces. Article 6 of the Covenant required that every effort should be made to apprehend individuals with the minimum use of force in security-related cases. He wondered what efforts had been made to apprehend those six men before the use of lethal force had been authorized.

44. Mr. ANDO asked how the Islamic laws on polygamy were interpreted by Yemeni society.

45. Ms. WEDGWOOD said that according to article 6 of the Covenant, the death penalty could be imposed only for the most serious offences. She wondered whether the Government intended to re-examine the use of the death penalty for crimes relating to sodomy and the drug trade. The Committee was concerned about revenge and blood money, particularly since in Yemen failure to pay blood money could result in death, even though under article 11 of the Covenant a person could not be imprisoned for not paying financial debts. Articles 434 and 484 of the Yemeni Penal Code provided for the possibility of the amputation of limbs as punishment, which was in stark violation of the Covenant.

46. Turning to the issue of polygamy, she wished to know whether a woman could contract a form of marriage that excluded polygamy. She wondered whether the law provided for secular marriage and, if not, whether the Government planned to institute such a provision. She also wished to know whether the issue of the equal treatment of wives was justiciable before a family court. Although a woman must be informed in the event that her husband intended to take a second wife, that information was useless unless she had the right to object to a polygamous marriage.

47. She took it that the delegation conceded that female genital mutilation was not in line with the Covenant and was not protected under the sharia, and asked whether the Government intended to criminalize all forms of such mutilation. She wished to know whether there had been any cases of prosecution for domestic violence. The frequency of cases in which four male witnesses to an act of adultery could apparently be found, and thus an adulterous woman could be stoned to death, seemed implausible.

The meeting rose at 5.50 p.m.

韋委員薇對於審查各機關對結論性意見與建議的初步回應第 5 次會議回應

促進婦女就業

針對有關提升婦女就業方面，政府各單位所提注重托育、安親或是課業輔導的措施，本人及王幼玲委員曾參加國際專家的審查會議，其實專家還提到誰照顧老弱、病人等，**應該在制度中保障性別平等，如何促進勞動市場的性別平等？**各部會所回應是排除照顧孩童等婦女就業障礙，但是還應該注意如何積極促進就業？特別是應該訂定促進偏鄉(並不是指山上)或是中南部的婦女就業機會在近期應該提升多少，因為台灣城鄉差距是很大的。

關於宣導性平、哺乳等時間及設施都是針對大型機構、廠房，如何推展到小機構、公司？不應該由勞雇協商，政府應該訂出制度。

目前台灣很少公辦育兒、托兒，專家特別提到如何提升好品質的托兒、育兒？我認為品質不好會成為公辦托兒、育兒的標籤，也不會吸引人使用。不久前媒體報導許多縣市公辦托兒所利潤幾乎沒有或是很低，經營的非營利團體只夠成本，因此許多委辦案都發包不出去，無機構願意承接，請相關單位注意到此點，沒有好的配套，是無法推展的。

移工方面的建議：

其他民間團體所建議的勞雇雙方自由轉換、重新檢討配額制度、本勞、外勞、廠工、家事工等都適用勞基法基本薪資保障，同工同酬，同時家庭幫傭及看護工應該有勞保及受職災保護法保障。保障無證件勞工的健康權等等我都同意。

仲介費是長久問題，也是對移工最大壓力，降低國外仲介費請勞委會參考監察院最近出版的移工人權研究報告由周陽山等委員提報的，其中提到學習韓國的國對國直接引進外勞，沒有仲介費。關於國內的仲介服務費，我們建議由勞雇各自負擔一半，因為仲介經常只服務雇主，偶而服務移工。

簡化聘僱外勞的手續及申請步驟、檢驗手續(越複雜勞雇就越需要仰賴仲介公司)，而仲介公司就越能從中獲巨額利潤。

保障移工人權最重要是司法體系，但是法院的檢察官、法官對於相關勞基法、就業服務法、人口販運防制法、性侵害防治法等都不熟悉，有的法官被調任去審理時才開始接受培訓，已經太慢，緩不濟急。同時有些法官、檢察官對外勞有偏見。司法系統需要接受人權培訓。

另一維護外勞人權的重要單位是地方政府的勞政單位，國際專家也特別提到外勞人權制度及法規的落實是與地方政府相關。外勞遭受勞資問題、各類問題、申訴1955 派案到地方勞工局去查察、協調，但是許多地方政府勞工單位承辦人員對相關法規、資訊不清楚，缺乏主動通告外勞的權利及提供資訊，有時並沒有查察而虛報。同時，協調及查察應該注意公平性，承辦人員經常只聽雇主或是仲介公司的話，或是把主導全放在雇主身上，而沒有詢問、聆聽外勞，忽略勞工權益。有的地方政府直接把 1955 的派案直接交給仲介公司處理，結果仲介公司懲罰外勞報案。勞委會或是內政部如何建立監督與管考地方政府執行保障外勞權益的機制？

還有漁工是外勞中最弱勢的，因為一旦船靠岸，他們無法上岸或是上岸後沒有住宿之地、沒有吃的，而許多船主本身也是弱勢。漁工經常會遭受到職災，可是沒有職災保護法保障。

總之，我們對待所有外勞都應該與本地人一樣公平，公平很重要。