BURKINA FASO **IVth REPUBLIC**

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UNITY-PROGRESS-JUSTICE **FOURTH LEGISLATURE**

NATIONAL ASSEMBLY

LAW No.028-2008/AN

RELATED TO THE LABOUR ACT IN BURKINA FASO

MK/HO

BURKINA FASO

Unity-Progress-Justice

DECREE No.2008 ___331/PRES

Promulgating law no.28-2008/AN

Of May 13, 2008 related to the

Labour Act in Burkina Faso

THE PRESIDENT OF FASO,

PRESIDENT OF THE COUNCIL OF MINISTERS,

Considering the Constitution;

Considering letter no. 2008-037/AN/PRES/SG/DGSL/DSC of May 29, 2008 of The Speaker of the National Assembly transmitting for promulgation law no.028-2008 of May 8, 2008 related to the Labour Act in Burkina Faso,

DECIDES

ARTICLE 1: Is promulgated law no.028-2008 of May 8, 2008 related to the Labour Act in Burkina Faso.

ARTICLE 2: This decree will be published in the Official Newspaper of the Faso.

Issued in Ouagadougou on June 19, 2008

Blaise COMPAORE

President of Burkina Faso

THE NATIONAL ASSEMBLY

Considering the Constitution;

Considering resolution n° 001-2007/AN of June 4, 2007
Related to the validation of the mandate of the Members of Parliament;

Decided on its session of May 13, 2008
And adopted the Act, the terms of which
are the following:

TITLE I: GENERAL PROVISIONS

Article 1:

This Act applies to workers and employers carrying out their professional activity in Burkina Faso.

Article 2:

In this law, worker shall mean any person who has undertaken to place his services in return for a remuneration, under the direction and control of another person, whether an individual or a public or a private corporation called the employer.
For the purpose of determining whether a person is a worker, no account shall be taken of legal position of the employer or the worker.

Article 3:

The civil servants, magistrates, militaries and workers of the local governments, as well as any workers ruled by a specific act are not subject to the provisions of this Act.

Article 4 :

Job and professional discrimination shall be prohibited.

By discrimination, it is meant:

1. Any distinction, exclusion or preference based mainly on the race, colour, sex, religion, political opinion, disability, pregnancy, national ancestry or social origin, the effect of which is to destroy or alter the equal opportunity or treatment regarding job or profession ;

2. Any other distinction, exclusion or preference the effect of which is to destroy or alter the equal opportunity or treatment regarding job or profession.

Article 5:

Forced or compulsory labour shall be prohibited.
“Forced” or « compulsory » labour shall mean any labour or service demanded from an individual under threat of penalty, being a labour or a service which the individual has not freely offered to perform.

No one shall resort to such labour under no circumstances, mainly as:

1. Coercion or political education measure, or sanction towards people who have expressed their political opinions;

2. Mobilization and use of workforce method to political ends;

3. Work discipline measure;

4. Social, racial, national or religious discrimination measure;

5. Sanction for taking part in strikes.

Article 6:

However shall not be considered forced or compulsory labour under this Act:

1. Any work or service exacted by virtue of compulsory military service laws and regulations for work of a purely military nature;

2. Any work or service resulting from the citizens' normal civic obligations;

3. Any work or service demanded from a person resulting from a legal sentence under the condition that this work is executed under the supervision and control of public authorities, and that the person is neither conceded nor made available to private persons, companies or private corporation, except to public utility associations ;

4. Any work or service demanded from a person in case of circumstances jeopardizing or with the risk to jeopardize lives or the normal existence conditions of the whole community or a group of it, and in case of force majeure.

The work or services mentioned in items 1 to 4 above can be **demanded from** valid adults only, neither below eighteen years of age nor above forty-five.

TITLE II: EMPLOYMENT, PROFESSIONAL TRAINING AND VOCATIONAL GUIDANCE RECRUITMENT AND TEMPORARY JOB

CHAPTER I: JOB, PROFESSIONAL TRAINING AND VOCATIONAL GUIDANCE

Section 1: Professional training and vocational guidance

Article 7 :

A national council for jobs and professional training is put in place, and is in charge of job and professional training issues.

A decree taken by Cabinet meeting defines its composition, organization, assignments and operation.

Article 8 :

Professional training includes all the activities aiming at ensuring the acquisition of knowledge, qualifications and aptitudes which are necessary to practice a profession or hold a specific position.

When the worker benefits from training or professional improvement training supported by the employer, it can be agreed that the worker will remain with that employer for a given time with regard to the training or improvement training costs.

A decree taken by Cabinet meeting defines the conditions for professional training.

Article 9:

Vocational guidance consists to inform and guide the job applicants, in particular the young people, on the range of the professions and to help each one to choose a way in conformity with his/her aptitudes through counselling and individual and collective consultations.

A decree taken by the Cabinet meeting specifies the terms of the vocational guidance.

Section 2: Contract of training course

Article 10:

It is established a contract of training course in order to encourage the promotion of employment and professional training.

Article 11:

The contract of training course is a convention by which, a master of training course commits himself to give or commit someone to give to a person called trainee, a practical professional training.

The contract of training course aims at providing the trainee with experience and professional skills to facilitate his/her access to an employment and his/her insertion in the professional life.

Article 12:

The contract of training course is concluded imperatively before admission of the trainee in the enterprise. It is testified in writing in the official language under condition of nullity.

The contract of training course is free from all excise taxes and of recording.

The other requirements on form and content, the obligations of the parties and the effects of the contract of training course are statutorily determined by the minister of labour after consultation with the advisory labour commission.

Section 3: Contract of apprenticeship

Article 13:

The contract of apprenticeship is the contract by which a person, called Master, commits himself to give or to assign someone to give a methodical and complete professional training to another person called apprentice. It is established by taking account of the uses and habits in the profession.

The apprentice must in return obey the instructions which he/she receives and carry out the task assigned to him/her for the purpose of this apprenticeship.

The contract of apprenticeship must be testified in writing, under condition of nullity. It is free from all excise taxes and of recording.

It is written in the official language and if possible in the language of the apprentice.

Article 14 :

The minister in charge of labour, after consultation with the advisory labour commission, determines statutorily:

1. the conditions related to the form, the content, the obligations of the parties, and the effects of the contract of apprenticeship;

2. the categories of enterprises in which a percentage of apprentices is fixed as regard the number of workers.

Article 15 :

The apprentice whose training period is completed takes an examination with an approved organization which issues a vocational training certificate in the event of success.

The minister in charge of labour, after consultation with the advisory labour commission, determines statutorily:

1. the body responsible for the organization of the examination and conditions of its approval;

2. the evaluation conditions of the end of training.

Article 16:

The recruitment of apprentices, students or trainees bound by an apprenticeship contract from the schools and professional training centres is subject to payment of damages by the new employer to the apprentice's master, notwithstanding the penal sanctions defined in title IX of this Act.

However, the new employer is exempted from payment of the damages if he gives evidence of his good faith.

Article 17:

Any new apprenticeship contract concluded without full execution or legal termination of the obligations of the previous one is null and void.

CHAPTER II: PLACEMENT, TEMPORARY WORK ACTIVITY

Article 18:

Placement activity is the fact, for any person either an individual or a corporation, to serve as an intermediary to find an employment for a worker or a worker for an employer.

The placement activity can be public or private. In the latter, the operator can benefit from it.

The fact for any person either an individual or a corporation to carry out activities dealing with job seeking, such as the supply of information without having the purpose of matching an offer to specific demands, is also considered as a private placement activity.

Article 19:

The temporary work contractor is any person either an individual or a corporation, whose main activity is making available to users, workers according to a given qualification.

Article 20:

The public services in charge of employment, training and vocational guidance can receive job offers and applications and ensure the placement tests on request of the employers, workers and job applicants.

Article 21:

The government institutions, the enterprises with public participation and the projects financed on public funds are bound to announce the job vacancies and organize recruitment tests.

Article 22:

The collective recruitment of workers for their employment abroad shall be prohibited, except prior approval of the minister in charge of labour after consultation with the ministers in charge of employment, the foreign affairs and the territorial administration.

Article 23:

The opening of firms or private placement firms and temporary work enterprise is free, subject to compliance with the legal and statutory provisions.

Article 24 :

The activities defined in article 18 above can be carried out only by a person either an individual or a corporation who had duly obtained an approval delivered by the minister in charge of labour after consultation with the minister in charge of employment.

Article 25 :

Any person either an individual or a corporation who wishes to open an office or a private placement firm or a temporary work enterprise must meet the statutory conditions defined by the ministers in charge of labour and employment, after consultation with the advisory labour commission.

Article 26 :

The offices or private placement firms and the temporary work enterprises should not subject the workers to any discrimination such as defined in article 4 above.

Article 27 :

The offices or private placement firms and the temporary work enterprises should not charge the job applicants, directly or indirectly, entirely or partly, any fees, or other expenses.

Exemptions to the provisions of subparagraph 1 above can be granted for some categories of workers and services specifically identified by the minister in charge of labour, after consultation with the advisory labour commission.

Article 28 :

In the event of strike or lockout started in the respect of the collective labour disputes settlement procedure defined by this Act, the final placement operations in the enterprise concerned with this suspension of work are immediately stopped.

TITLE III : PROFESSIONAL RELATIONS

CHAPTER I: GENERAL PROVISIONS

Section 1 : General Principles

Article 29 :

A contract of employment shall be any agreement in writing or verbal by which a person called worker undertakes to put his /her services against remuneration under the authority and management of another person, either an individual or a corporation, public or private called employer.

The contract of employment shall be concluded freely and shall be testified in the forms agreed by the contracting parties subject to the provisions of articles 55,56 and 57 of this Act.

Evidence of the existence of the contract of employment can be brought by all means.

Article 30 :

The written contract of employment shall be free from all excise taxes and of recording, subject to the provisions of article 58 below.

Article 31:

The worker can engage his services only for a period of time or for a limited time to the execution of an activity or a given undertaking.

Article 32:

The minister in charge of labour, exceptionally and for economic or social reasons, and particularly for health or public health interests, can statutorily, after consultation with the advisory labour commission, limit or prohibit recruitment in some given zones.

Article 33:

Any contract of employment concluded to be carried out in Burkina Faso is subject to the provisions of this law, whatever the place of the conclusion of the contract and the residence of one or the other party.

It is the same of any contract of employment concluded to be carried out under another legislation and the partial execution of which in Burkina Faso exceeds three months.

Article 34 :

Any collective recruitment of workers by a single contract or a team contract is prohibited.

When a group of employers engages a worker, a leader of the employers must be explicitly identified in the contract of employment.

Section 2: Obligations of the parties to the contract

Article 35:

The worker devotes the whole of his/her professional activity to the enterprise, except contrary convention.

However, he/she keeps the freedom to execute outside his/her working time, any gainful employment in professional matter not likely to compete with the enterprise directly or to impact the good execution of the agreed services.
He/she must in particular:

1. provide the work for which he/she was engaged, to carry it out himself/herself and carefully;

2. obey his/her hierarchy;

3. respect the discipline of the enterprise and comply with the work schedules and health and security instructions.

Article 36:

The employer shall:

1. provide the work at the work place agreed upon. He/she cannot require work other than the one defined in the contract;

2. pay the wages, allowances and national insurance contributions due under the terms of the statutory, conventional and contractual regulations;

3. conform with the standard hygiene and safety requirements defined by the regulations in force;

4. treat the worker with dignity;

5. see to the maintenance of good standards of the morality and the observation of public decency;

6. prohibit any form of physical or moral violence or any other abuse, including sexual harassment;

7. communicate any act of recruitment specifying the date, the wages and the professional qualification of the worker to the labour inspection of his district.

Article 37:

Sexual harassment in the labour framework shall be prohibited.

Sexual harassment between colleagues, suppliers or customers encountered in the labour framework shall also be prohibited.

Sexual harassment consists in obtaining from others by order, word, intimidation, act, gesture, threat or force, favours of sexual nature.

Article 38:

The employer must prohibit any discrimination of any nature as regards access to employment, work conditions, professional training, job protection or dismissal, particularly as regard the serologic status of the HIV infection, real or apparent.

Article 39:

Any contract of employment provision prohibiting the worker from carrying out any activity with the expiry of the contract is a wrongful one, null and void in the event the breach of contract is caused by the worker or results from a gross misconduct of the supervisor.

Any provision on the duration or geographical range which is not justified or essential for the safeguard of the employer's interests constitutes an abusive obstacle to the free exercise of the worker's professional activity.

Article 40:

The disabled people, not able to work under the normal work conditions, benefit from adapted employment or, where necessary, protected workrooms.

The conditions under which the employers are bound to reserve some jobs to the handicapped people are defined by decree taken in Cabinet meeting after consultation with the advisory labour commission.

CHAPTER II: PROBATION-BASED CONTRACT OF EMPLOYMENT

Article 41:

There is engagement after probation when the employer and the worker, in order to conclude a final, verbal or written contract of employment, decide as a preliminary step to appreciate, mainly for the former, the quality of the services of the worker and his output and for the latter, the work, living, remuneration, hygiene and safety conditions as well as the social climate in the enterprise.

The probation-based contract shall be testified in writing, failing this, it is defined as a permanent contract of employment.

The probation-based contract can be included in the body of a final contract.

Article 42 :

The probation-based contract cannot be concluded for a period longer than the period which is necessary to test the engaged personnel, considering the technique and habits of the profession.

The probation period is of:

1. eight days for the workers whose wages are fixed per hour or the day ;
2. one month for workers other than the executives**,** supervisors, technicians and similar staff.
3. three months for the executives, supervisors, technicians and similar staff.

Engagement after probation can be renewed only once and for the same duration.

The worker receives at least the minimum wage of the professional category corresponding to the employment occupied for the probation period.

Article 43 :

Extending the services after expiry of the probation-based contract, without any written renewal, is equivalent to a permanent contract of employment, starting on the date of the beginning of the test.

Article 44 :

Engagement after probation can be stopped at any time, without notice nor allowance, on the will of one or the other party, except with specific provisions expressly defined in the contract.

Article 45 :

The provisions of articles 60 to 68, 70 to 74,78,93,96 and 98 to 103 below do not apply to the engagement after probation contracts which can be terminated without notice and without the possibility for one or the other party to claim any allowance, except contrary convention.

Article 46 :

The forms and modalities to resort to work and engagement of probation contract are defined statutorily by the minister in charge of labour, after consultation with the advisory labour commission.

CHAPTER III: PART-TIME CONTRACT OF EMPLOYMENT

Article 47 :

The part-time contract of employment is the contract the execution time of which is shorter than the lawful weekly duration.

Part-time work is remunerated in proportion to the working time actually accomplished.

Article 48 :

The part-time contract of employment can be of limited duration. It is, therefore, concluded, carried out and terminated under the same conditions as the fixed-term contract of employment.

It can be of unlimited duration. In this case, it is concluded, carried out and terminated under the same conditions as those fixed for the permanent contract of employment.

CHAPTER IV: FIXED-TERM CONTRACT OF EMPLOYMENT

Article 49 :

The fixed-term contract of employment is the contract the terms of which are specified in advance by the will of both parties.

The following are considered as fixed-term contracts of employment:

1. a contract of employment concluded for the execution of a determined infrastructure, the realization of an enterprise the duration of which cannot be assessed beforehand with precision;

2. a contract of employment the terms of which are subject to the occurrence of a future and sure event the date of which is not known exactly.

Article 50 :

The seasonal contract of employment is a fixed-term contract of employment through which the worker engages his services for the period of a crop, a commercial, industrial or handicraft year periods the end of which is independent from the will of the parties.

Notwithstanding the provisions of article 93 subparagraph 18, the seasonal contract ends with the end of the campaign for which it was concluded. Resuming the activities, the employer depending on his needs gives the job priority to the workers available after the dead season.

The seasonal contract of employment which continues after the campaign changes into a permanent contract of employment.

Article 51:

The seasonal worker is entitled to an end of contract allowance, calculated on the same bases as the severance pay, when he reaches the duration of presence necessary to its attribution following successive recruitment in the same enterprise.

Article 52:

The fixed-term contract of employment is renewable without limitation except for case of abuse which is left to the appreciation of the relevant court.

Article 53:

The provisions of article 52 above apply to:

1. workers engaged per hour or per day for an occupation of short duration not exceeding one day;

2. workers engaged in complement of workforce to carry out work related to additional activities of the enterprise;

3. workers engaged for a provisional replacement of other workers of the enterprise in legal suspension of the contract of employment as defined by article 93 below;

4. seasonal workers;

5. workers engaged by the enterprises concerned with the branches of industry in which it is common not to resort to permanent contract of employment.

The list of these branches of industry is fixed statutorily by the minister in charge for labour after consultation with the advisory labour commission.

Article 54:

Except when its term is vague, the fixed-term contract of employment cannot be concluded for a duration longer than two years for the domestic workers and longer than three years for the non domestic workers.

The fixed-term contract of employment wrongly renewed is transformed into a permanent contract, except in the cases defined in article 53 above.

Article 55:

The fixed-term contract of employment must be testified in writing. Failing this, it becomes a permanent contract of employment.

Article 56:

The domestic workers' contract of employment requiring their settlement out of the national territory as well as the non domestic workers' contracts must be endorsed and recorded by the labour inspection of the area.

Article 57:

The application of the endorsement shall be made by the employer. It must be submitted to the relevant authority at the latest thirty days after the enforcement of the contract of employment.

The endorsement is granted if the relevant authority seized for this purpose did not make known its decision within fifteen days after the reception of the application.
Omission or refusal of the contract of employment endorsement for non domestic workers renders the contract null.

If the employer omits to request for the endorsement, the worker has the right to notify the nullity of the contract of employment and claim for damages. Repatriation of the worker is the responsibility of the employer.

Not submitting the contract of employment by the employer for the endorsement formality exposes the employer to the penalties stipulated in this Act.

Article 58:

The contract of employment endorsement for non domestic workers is subjected to the payment of fees, notwithstanding the provisions of article 30 above.

The amount and the modes of payment of these fees are determined by joint order of the ministers in charge of labour and finance.

Article 59:

The fixed-term contract of employment cannot in any case be concluded:

1. to definitively replace a worker whose contract is suspended because of collective labour disputes;

2. to carry out particularly dangerous activities, except with express authorization by the labour inspector responsible for the zone where these activities must be carried out.

Article 60:

A fixed-term contract of employment may not be terminated prior to its expiry save in the case of written consent of the parties, of force majeure or gross misconduct. In the event of dispute, the relevant court will appreciate.

The non-compliance of one of the parties with the provisions stipulated in the preceding subparagraph can bring the other party to claim for corresponding damages.

Article 61:

The completion of the term of a fixed-term contract of employment gives right to the worker to benefit from an end of term contract allowance calculated on the same bases as the severance pay as defined in the collective labour agreements.

CHAPTER V: PERMANENT CONTRACT OF EMPLOYMENT

Article 62:

The permanent contract of employment is a contract concluded without specifying its duration.

It is not subjected to endorsement except for the cases stipulated in article 56 above.

Article 63 :

The permanent contract of employment for domestic workers which requires for its execution a resettlement of the workers out of the national territory, and that of the non domestic workers, are necessarily subjected to the endorsement of the relevant services of the ministry in charge of labour, notwithstanding the provisions of article 62 above.

Article 64:

The permanent contract of employment can always cease by the will of one of the parties, under reserve related to economic dismissal, the staff and trade union representatives and of any other protected worker.

Article 65 :

Termination of the permanent contract of employment is subordinated to a written notice by the party which takes the initiative of the termination.

This notice which is not subordinated to any suspensive or resolutive condition comes into force from the delivery date of the notification.

The reason for the termination must be clearly stated in the notification.

Article 66:

The term of the notice deadline is of:

1. eight days for the workers whose wages are fixed per hour or the day;

2. one month for the workers other than the executives, supervisors, technicians and similar staff;

3. three months for the executives, supervisors, technicians and similar staff.

Article 67:

During the period of notice, the employer and the worker are bound to comply with all the reciprocal obligations which they are entitled to.

The party with regard to which these obligations are not respected is exempted to observe the remaining term of the notice, without prejudice of the damages the injured party is due to claim in the relevant court..

During the terms of the notice, the worker benefits from two working days with full wages per week in order to look for another job.

However, in the event of dismissal and when the dismissed worker is in the obligation to immediately take a new job, he can, after having informed the employer, leave the establishment before the expiry of the notice period without having of this fact to pay a compensation allowance.

Article 68 :

Any termination of the permanent contract of employment without advance notice or without complying with the term of the notice subjects the party which took the initiative of it, to pay a compensation allowance to the other party, subject to the provisions of article 67 above.

The amount of this allowance corresponds to the remuneration and advantages of any nature which the worker would have benefited from during the notice, which was not actually respected.

Article 69 :

The termination of the permanent contract of employment can occur without notice in the event of gross misconduct subject to the appreciation of the relevant court as regard the gravity of the fault.

Article 70 :

The employer must give the proof of the legitimacy of the reasons put forward to justify the termination, before the relevant court, in case of dispute on the reason for the dismissal.

Any wrongful dismissal brings about the rehabilitation of the worker and in the event of opposition or refusal to rehabilitate, the payment of damages.

Any wrongful resignation entitles to damages.

Article 71:

Under this Act, dismissal carried out without legitimate reason is a wrongful one.

Particularly, dismissals carried out in the following cases are wrongful ones:

1. when the reason put forward is inaccurate;

2. when the dismissal is justified by the worker's opinions, his trade-union activity, membership or non membership of a trade union, serologic status with real or supposed HIV;

3. when the dismissal is justified by pregnancy of the worker or birth of her child;

4. when the dismissal is justified by the fact that the worker solicits, carries on or carried on a workers' representation mandate;

5. when the dismissal is justified by the lodging of a complaint by the worker or any recourse against the employer and/or the administrative authorities;

6. when the dismissal is based on discrimination as defined in article 4 and/or justified by the worker's marital status and family responsibilities.

Article 72 :

Under this Act, the termination of contract which occurred without observation of the procedure is irregular, particularly:

1. when the dismissal was not notified in writing or when the reason does not appear in the letter of dismissal;

2. when the worker's resignation was not notified in writing.

Article 73 :

In the event of wrongful dismissal or of an irregular termination of contract of employment, the party which estimates that its rights have been infringed can seize the court dealing with labour dispute to request for damages.

The relevant court notes the abuse by an investigation into the causes and circumstances of the termination of contract.

The decision given for this purpose must expressly mention the alleged reason put forward by the party which broke the contract of employment.

Article 74 :

The amount of the damages is fixed by taking into account in general all the elements which can justify the existence of the damage caused and determine its extent, particularly:

1. when the responsibility is incumbent on the worker, from the damage undergone by the employer because of the non execution of the contract, within the maximum of six month salary;

2. when the responsibility is incumbent on the employer, of the uses, the nature of the engaged services, the seniority of the services, the age of the worker and the vested rights.

In all the cases, the amount of the allocated damages cannot exceed eighteen months' salary.

These damages shall be distinct from pay in-lieu of notice and severance pay.

Article 75 :

The action in payment of the severance pay, of the allowance of end of contract and the damages is limited to five years after the termination of work relationship.

Article 76 :

If the worker dismissal is legitimate as for the content, but occurs without the procedure provided for, particularly with the written notification of the termination or of the statement of its reason, the court grants to the worker a compensation which cannot be higher than three months' salary.

If the resignation of the worker is not notified in writing, the court grants to the employer a compensation equal to one month's salary.

For the calculation of the damages, the salary concerned is calculated on the basis of the average monthly total salary perceived during the last six months or the average monthly total salary perceived since the entry in the enterprise, if the worker has less than six months of seniority.

Article 77 :

If one of the parties wishes to put an end to the contract of employment before the worker's departure on leave, notification must be made to other party, fifteen days before the leaving date.

In the event of non-observance of this obligation, the pay in-lieu of notice is raised eight days with regard to the workers paid per hour, by the day or by the week and one month for the workers paid by the month.

It is the same if the termination of the contract of employment occurs during the leave of the worker.

Article 78 :

When a worker wrongly breaks his contract of employment and offers his services to a new employer, the latter is jointly responsible for the damage caused to the previous employer in the following cases:

1. if it is shown that the new employer intervened when the worker was tempted away from the enterprise;

2. if he engaged a worker whom he knows already bound by a contract of employment;

3. If he continued to occupy the worker after having learned that the latter is still bound by a contract of employment to another employer.

In the third case, the responsibility for the new employer is released if at the time when he was informed, the contract of employment wrongly broken by the worker expires by:

- the end of the term of a fixed term contract of employment;
- the expiry of the notice or if a fifteen-day deadline were run out since the termination of the permanent contract.

CHAPTER VI: SUBCONTRACTOR

Article 79:

A subcontractor shall be person whether an individual or a corporation who recruits manpower to carry out a piece of work or supply a service for the payment of a lump sum within the framework of the fulfilment of a written contract called subcontracting contract concluded with a contractor.

The subcontracting contract is deposited on the initiative of the contractor at the labour inspection of the district and the social security institution.

Article 80 :

When work is carried out in workrooms, stores or on building sites belonging to the contractor, he shall, when the subcontracting becomes insolvent, assume the subcontractor' obligation towards the workers up to the amount of the subcontracting contract.

The worker whose rights have been infringed can, in this case, take direct action against the contractor.

Article 81 :

The subcontractor is bound to indicate his qualities, the name, first names and addresses of the contractor, by way of apparent affixed poster in each of the workrooms, stores or building sites used.

It must post, under the same conditions, the pay dates of the wages to his workers for the period of work.

Article 82 :

The contractor must post and up-date the list of the subcontractor whom he concluded a contract with in his offices.

The subcontractor must communicate to the contractor the payday memo for the period of work.

Article 83 :

The subcontractor who does not comply with the legislative, statutory or conventional measures can see himself prohibiting the exercise of his profession:

1. temporarily, by decision of the minister in charge of labour;

2. definitely, by court decision, on submission of the case to the court by the minister in charge of labour.

Article 84 :

The suspension or prohibition decisions are subject to appeal in the relevant courts.

The modes of enforcement of articles 79 to 83 are statutorily defined by the minister in charge of labour, after consultation with the advisory labour commission.

CHAPTER VII: MODIFICATION OF THE CONTRACT OF EMPLOYMENT

Article 85:

The employer cannot impose a change that is not stipulated in the initial contract of employment of the worker.

Any proposition of substantial change to the contract of employment must be written and approved by the worker. In case of refusal from his/her part, the contract is considered as broken due to the employer.

Article 86 :

When a worker temporarily complies with the requirement of his/her employer, by necessity of work or to avoid unemployment, a job of lower category than the one he/she is appointed for, his/her salary and his/her prior appointment must be maintained during the corresponding period that cannot exceed six months.

Article 87 :

When an employer, for reasons due to the economic situation resulting from the reorganization of the enterprise, requests the worker to definitely accept a job that comes under a lower category than the one he/she is appointed for, the worker has the right not to accept this appointment.

If the worker refuses, the contract is considered as broken due to the employer. If the worker agrees, he/she is paid according to the conditions corresponding to his/her new job.

Article 88 :

The fact that a worker carries out a job including a superior ranking temporarily or acting position does not give automatically the right to financial advantages or other pertaining to the so called job.

The acting position is notified to the worker in writing, with indication of the duration that cannot exceed:

1. one month for manual workers , unskilled workers, skilled workers and employees;
2. three months for executives, supervisors, technicians and similar staff;

Except in case of sickness, accident which happened to the holder of the job, or replacement of the latter for a holiday or training period.

After this deadline and except in the above-mentioned cases, the employer must definitely settle the situation of the worker in question, which means to either replace him/her in the category corresponding to the new occupied job until now, or bring him/her back to his/her former position.

Article 89:

In case of sickness, accident, holiday or training of the holder of the position, the acting employee receives:

- After one month for the manual workers, unskilled workers, skilled workers and employees;
- After three months for the executives, supervisors, technicians and similar staff;

An allowance equals to the difference between his/her salary and the minimum salary of the category of the new job occupied by him/her in addition to the allowances attached to the position.

Article 90:

The female pregnant salaried employee, transferred to another post for health reasons, keeps her previous salary during all this period.

Article 91:

If the event of any change in the legal statute of the employers, in particular through succession, taking back under a new designation, sale, amalgamation, financial reorganization, or transformation into a partnership or company, all contracts of employment in force on the date of the change shall subsist between the new organization and the personnel of the enterprise.
Termination of these contracts can only occur in the forms and conditions defined in this title as if the change in the legal situation of the employer did not occur.

Article 92:

The new employer has to respect the obligations that fall to the former employer regarding the workers, whose contracts of employment remain, starting from the date of the modification of the legal situation of this one.

However, the new employer is not submitted to this obligation when it happens within the framework of a legal regulation procedure or the liquidation of the employer's property.

CHAPTER VIII: SUSPENSION OF THE CONTRACT OF EMPLOYMENT

Article 93:

The contract of employment shall be suspended in the event of:

1. The closing of the establishment in relation to the departure of the employer for military service or for a compulsory period of military training;

2. The military service of the worker and the compulsory periods of military training to which he/she is forced.

3. The absence of the worker because of sickness or non industrial accident testified by a medical certificate, within a time limit of one year: This deadline may be extended till the replacement of the worker;
4. The period of unavailability of the worker resulting from a industrial accident or a occupational disease;

5. The holiday period of a salaried employee beneficiary of the provisions of articles 144 and 145 that follow;

6. The unpaid holiday of a salaried employee beneficiary of the provisions of article 160 that follows;

7. Strike or lock-out set off according to the settlement procedure of collective labour dispute;

8. The absence of the worker, authorised by the employer regarding the regulation, collective agreements or individual agreements;

9. The period of secondment;

10. The period of disciplinary suspension;

11. The paid holiday eventually increased with travel time and the waiting and departure time of the worker;

12. The exercise of a political or trade union mandate by the worker and when the unpaid authorization of absence cannot be granted to him/her;

13. The detention of the worker for political reasons;

14. The detention of the worker who has not made any professional misconduct and within the limit of six months;

15. The detention of the worker, for legal inquiry and instruction because of an alleged professional misconduct and this, within the limit of six months;

16. Force majeure within the limit of five months, renewable only once.

The force majeure is defined as an unexpected, irresistible and unavoidable event preventing one or the other party in the contract of employment to implement its obligations.

The employer can terminate the contracts of employment with payment of the legal rights if the force majeure persists at the expiration of the renewal of the suspension.

1. The absence of the worker in order to assist his/her sick spouse within the limit of three months;

2. The dead season for the part-time workers;

3. The period of total lay-off.

Only the periods of contract of employment suspension targeted in points 1, 6, 12, 13, 14, 15, 16, 17 and 18 above are not considered as service time for determining the seniority of the worker in the enterprise.
To determine the right to paid holidays, the periods targeted at points 1, 6, 11, 12, 13, 14, 15, 16, 17 and 18 above are excluded.

Article 94:

Lay-off refers to interruption of the activity of an establishment because of an insurmountable event. It may be total or partial.
The putting into lay-off is related to the consultation with the staff representatives.

In case of lay-off and for lack of collective agreements, the conditions for workers compensation shall be determined statutorily by the minister in charge of labour, after consultation with the advisory labour commission.

Article 95:

Concerning article 93 point 1 above, the employer is obliged to pay the worker, within the normal limit of the notice, a compensation which is equal to the amount of his/her salary during the period of the absence.

If the contract is a fixed-term one, the limit of the notice to be taken into consideration is the one fixed within the conditions provided for permanent contracts of employment.

In this case, the suspension cannot result in the extension of the term of the contract initially stipulated.

Article 96:

Under article 93 point 3 above, the compensation of the worker during his/her absence is established as follows, regarding his/her seniority in the enterprise:

1. Less than a year of seniority

- full salary during one month,
- Half salary during the three following months.

2. From one to five years of seniority

- full salary during one month,
- Half salary during the three following months.

3. From six to ten years of seniority,

- Full salary during three months,
- Half salary the three following months.

4. From eleven to fifteen years of seniority

- Full salary during three months,
- Half salary the three following months.

5. Over fifteen years of seniority

- full salary during four months,
- Half salary the four following months.

The total amount of the compensation provided to the paragraph below represents the maximum of the sums that the worker may claim during the calendar year, whatever the number and the duration of his/her absence for non professional sicknesses or accidents are during this year.

CHAPTER IX: INTERRUPTION OF WORK RELATIONS

Article 97:

The causes of the interruption of work relations are:

1. Interruption on both parties' agreement;
2. Interruption of the activities of the enterprise;
3. Legal cancellation and legal resolution of the contract of employment;
4. End of the fixed-term contract;
5. Resignation;
6. Dismissal;
7. Retirement;
8. Permanent and total incapacity of work such as defined by the regulations;
9. Death

Article 98:

Dismissal on economic grounds shall mean any dismissal effected by the employer for one or several reasons not inherent in the person of the worker and resulting from an abolition or a transformation of posts or a substantial amendment to the contract of employment consequent on economic difficulties, technological changes or internal reorganizations.

Article 99:

The employer who envisages a dismissal on economic grounds for more than one salaried employee must refer to the staff representatives and seek with them, any solutions to maintain the positions. These solutions might be: the reduction of work hours, shift work, part-time work, lay-off, staff reorganization, arrangement of bonuses, compensations and advantages of all kinds, and even reduction of salaries.

The employer must give the staff representatives the right information and the documents necessary to the unfolding of the internal negotiations the duration of which must not exceed eight days.

After the internal negotiations, if they have come to an agreement, an agreement protocol precising the measures approved and the duration of their validity is signed by the parties and transmitted to the labour inspector for information.

Article 100:

In case a worker refuses in writing, to accept the measures defined in the previous article, he/she is dismissed with payment of his/her legal rights.

Article 101:

When the negotiations prescribed in article 99 above fail, or if despite the measures considered, some dismissals are necessary, the employer makes a list of the workers who are to be dismissed, as well as the retained criteria and communicates them in writing to the staff representatives. They have eight clear days maximum to give their opinion.

Article 102:

The communication of the employer and the answer of the staff representatives are transmitted without any delay by the employer to the labour inspector for any action that he/she judges useful to take within a period of eight days, starting from the date of reception; passed this deadline and except contrary agreement between the parties, the employer is not obliged to suspend the enforcement of the decision of dismissal.

Dismissal on economic grounds made in violation of the provisions of article 99 and the following, or for false reasons is a wrongful one and gives a right to damages.

In case of protest against the reason for dismissal, the charge of the proof falls to the employer.

Article 103:

The staff representatives and the representatives of the trade unions can only be dismissed if their job is suppressed and after prior authorization of the labour inspector of the district.

Article 104:

In case of dismissal for economic grounds, the parties may ask for the support of the public services within the framework of the development of social follow-up, reinsertion or retraining plans for the dismissed workers.

If the situation of the enterprise improves, the dismissed workers might be hired back if their qualifications permit them to meet the requirements of the announced positions.

Article 105:

The procedure for dismissal on economic grounds is moved away in case of mutual agreement on volunteer departure freely and equally negotiated between the parties. The employer gives the signed protocol to the labour inspector of the district for information.

Article 106:

At the end date of any contract of employment, the employer must issue for the worker a certificate showing exclusively his/her hiring date, the end date of the contract, the nature and dates of the positions successively held, failing this the employer exposes himself to damages and penalties.

The certificate is free from any excise and registration duties.

CHAPTER X: LABOUR COLLECTIVE AGREEMENTS AND INSTITUTIONS' AGREEMENTS

Article 107:

The labour collective agreement shall be an agreement related to the work conditions. It is concluded between the representatives of one or several trade unions or professional groups of workers on the one hand and one or several employer trade union organizations or any other groups of employer or one or many individual employer on the other hand.

The convention may include clauses which are more favourable to the workers than those of laws and regulations in force. It cannot depart from the provisions related to law and order defined by these laws and regulations.

The labour collective agreements determine their field of application. This one may be national or local.

Article 108:

The representatives of the trade unions or any other professional groups targeted by the above article 107 can conclude a convention in the name of the organization which they represent, in accordance with the statutory stipulations of this organization, a special deliberation of this organization or special mandates that are individually given to them by all the members.

If not, to be valid the labour collective agreement must be signed by a special deliberation of the concerned group or professional groups.

Article 109:

The duration of the labour collective agreement is decided on agreement of the parties.

At the expiry of a fixed-term collective agreement, it continues to be effective until a new convention is concluded.

Article 110:

The labour collective agreement must indicate the clauses of its renewal, of its revision or its denunciation.

Article 111:

Any labour professional trade union or any employer who is not part of the labour collective agreement may join it after.

The parties that contract or join a labour collective agreement may freely withdraw in return for a notice.

Article 112:

The labour collective agreement must be in writing, failing this it is null and void.

With consultation with the advisory labour commission, a decree is taken in Cabinet meeting to determine the conditions of registration, publication and translation of the labour collective agreements, as well as the membership conditions or the withdrawals stipulated in the previous article.

The labour collective agreements are applicable from the day that follows the deposit in accordance with the provisions of the regulation act above-mentioned, except otherwise stated.

Article 113:

All the people who have signed or who are members of the signatory organizations are submitted to the obligations of the labour collective agreements.

The member organizations are also bound to the labour collective agreement, as well as all those who, ultimately, become members of these organizations.

When the employer is bound by the clauses of the labour collective **agreement**, the provisions of this convention are essential to the relations issued by the individual contracts, except with more favourable provisions for workers.

Section 2: Conclusion of the collective agreement

Article 114:

The minister in charge of labour, on his initiative or on request of one of the most representative workers' trade unions or employer's association of the sector of activities, convenes a mixed commission in order to conclude a labour collective agreement.

This mixed commission includes, in equal number, representatives of the most represented workers' trade union and the representatives of the most represented employers' association of the sector of activities concerned or, failing these, the employers.

Article 115:

Appended conventions may be concluded for each of the main professional categories or in case of a common convention with several branches of activity, for each of the branches.

They contain specific work conditions to those categories or to those branches of activities and are negotiated by the most represented trade unions of the concerned categories or branches as defined by article 302 below.

Article 116:

The labour collective agreements defined by the present section, include provisions related to:

1. The free exercise of trade union right and the freedom of thought of workers;
2. The applicable salaries for each professional category;
3. The principle of non discrimination defined in article 4 of the present law;
4. The execution and the rate of overtime carried out by day or by night, during working days, Sundays and holidays;
5. The probation period and the period for the notice;
6. The staff representatives;
7. The revision, modification and denunciation procedure of all or part of the labour collective agreement;
8. The principle of equal payment between male and female manpower for an employment of equal value;
9. The paid holidays;
10. The displacement allowances;
11. The expatriate allowances if necessary;
12. Travelling class and weight of the luggage in case of the worker and his/her family's travelling;
13. The seniority allowances or promotion by grade;
14. The lay-off allowance;
15. The in-house training.

Article 117:

The labour collective agreement may also include, without restrictive listing:

1. regularity and output allowance;
2. basket allowance for workers who should have their lunch on their work place.
3. allowances for professional expenses and assimilated;
4. transport allowances;
5. allowances for painful, dangerous, dirty and messy tasks;
6. the general conditions for output or commission payment;
7. the hiring and dismissal conditions of the workers without undermining the workers' free choice of the trade union in their provisions;

8. the specific work conditions for women in some enterprises concerned by the labour collective agreement;
9. the specific work conditions for teenagers in some enterprises concerned by the labour collective agreements;
10. specific work conditions are: shift work, work during the weekly holiday and the holidays;
11. When necessary, the organization and functioning of the apprenticeship, training period and vocational training within the framework of the considered activity branch;
12. When necessary, the establishment of the guarantee modalities defined in chapter IV of title IV;
13. the short time hiring of some categories of staff and their payment conditions;
14. The organization, management and financing of social and medico-social services;
15. The procedures of conciliation related to the settlement of the collective labour disputes.

The optional provisions known as useful in the collective agreement may be made compulsory in accordance with the regulations.

Section 3: Extension procedure of the collective agreement

Article 118:

The labour collective agreement may be extended to one or several sectors of activity determined at the national or local level according to the procedure defined in the following provisions.

Article 119:

If a labour collective agreement concerning a determined branch of activities has been concluded at local or national level, the labour collective agreements concluded at a lower level adapt this convention or some of its provisions to their specific work conditions.

They may include new provisions and clauses that are more favourable to the workers.

Article 120:

On the request of one of the most representative trade union organizations or on the initiative of the minister in charge of labour, the provisions of labour collective agreements corresponding to the conditions determined by the present section may be made compulsory.

This obligation is extended to all employers and workers operating in the professional and territorial field of the convention by a regulation act, after consultation with the advisory labour commission.

This extension of the effects and sanctions of the labour collective agreement covers the period and the conditions stipulated in this convention.

Article 121:

The minister in charge of labour can statutorily exclude of the extension, after a motivated opinion of the advisory labour commission, the provisions that are in contradiction with the legislative or statutory regulations in force.

Besides, the minister can, in the same conditions, take out of the collective agreement the clauses which do not correspond to the situation of one or some branches of activity in the field concerned, without changing its spirit.

Article 122:

The statutory act provided under article 121 above stops producing effects when the collective agreement is denounced or renewed.

The minister in charge of labour can, after consultation with the advisory labour commission, on request of one of the signatory parties or on his/her initiative, revoke the statutory act in order to put an end to the extension of the collective agreement or some of its provisions.

This measure is taken when the convention or the provisions do not correspond any more to the situation of one of some branches of activity in the territorial field taken into consideration.

Article 123:

A statutory act of the minister in charge of labour can, failing or expecting the establishment of a collective agreement, regulate the work conditions for a determined profession, after consultation with the advisory labour commission.

This act may be taken for a given profession or, if need be, for a group of professions for which work conditions are comparable. It may repeal collective agreements concluded previously to the present law the provisions of which are

contrary to the law and have stayed in force while expecting the establishment of new conventions.

Article 124:

Any extension or withdrawal of extension statutory act must be preceded by dialogue with the professional organizations and any interested persons who must make their observations known within a deadline of thirty days.

The clauses of this dialogue are determined statutorily by the minister in charge of labour after consultation with the advisory labour commission.

Section 4: Collective company agreements

Article 125:

The collective company agreements are collective agreements concluded between a single employer and a group of employers on the one hand, and professional organizations of workers on the other hand.

They may concern one or several establishments and professional organizations of workers present in one or several establishments.

The collective company agreements aim at adapting the national or local collective agreements to the specific conditions of one or several establishments concerned.

They can include new provisions and more favourable clauses for the workers.

In the absence of local or national labour agreements, the collective company agreements can only deal with the salary rates and fringe benefits, except exemptions granted by the minister in charge of labour.

The provisions of articles 109 to 113 above apply to agreements provided in the present article.

Article 126:

An establishment shall be a production unit including people working under the authority of one or several representatives of the same employer.

Section 5: Labour collective agreement within the public services, enterprises and establishments.

Article 127:

The enterprise is an individual or collective economic establishment with a legal personality the purpose of which is to produce goods or services. The enterprise may include one or several establishments.

Article 128:

When the staff of the public services, enterprises and establishments is not submitted to specific act or regulation, collective agreements may be concluded in accordance with the provisions of the present chapter.

The statutes of the staff of the public services, enterprises and establishments are endorsed by the labour services before their enforcement.

Article 129:

When a collective convention is statutorily submitted to extension under article 120 above, it is applicable to public services, enterprises and establishments targeted in the present section which, due to their nature and their activity, are placed in its application field, in the absence of contrary provisions.

Section 6: Execution of labour collective agreement and company agreements

Article 130:

Associations of workers or employers bound by a labour collective agreement or one of the agreements under article 125 above are responsible for its good execution.

Article 131:

Associations bound by a collective agreement or by one of the agreements under article 125 above can resort to court, in case of violation of their obligations by one or the other party to the collective agreement or the collective company agreement.

Article 132:

People who are bound by the collective agreement or by one of the collective company agreement provided under article 125 above can claim damages from the other people or associations also bound by the convention or the agreement who infringe their commitments.

Article 133:

Associations which are bound by the collective agreement or by one of the collective company agreements provided under article 125 above can exercise all actions allowed in this convention or this agreement in favour of one of their members.

They do not have to justify of any mandate of the concerned person, provided that the latter has been informed and has not disagreed. The concerned person can always intervene at the proceedings engaged by the group.
When proceedings are instituted by a person or an association, any association whose member are bound by the convention or by the agreement can always intervene at these proceedings due to the collective interest, the solution of the dispute can present to its members.

CHAPTER XI: WORKSHOP REGULATIONS

Article 134:

The workshop regulations are established by the manager of the enterprise and submitted to the endorsement of the labour inspector of the district.

The workshop regulations must only include the provisions related to the technical work organization, to the discipline and to the prescriptions related to labour security and health.

Any other clauses that would appear, particularly those related to remuneration, are null and void, under reserve of the provisions of article 193 below.

Article 135:

The manager of the enterprise must communicate the workshop regulations the staff representatives and the labour inspection before their enforcement.

Article 136:

The minister in charge of labour, after consultation with the advisory labour commission decides statutorily on the dissemination, submission and posting modalities of the workshop regulations, as well as the number of workers above which the enterprise is required to develop workshop regulations.

TITLE IV: GENERAL CONDITIONS OF EMPLOYMENT

CHAPTER I: DURATION OF WORK

Section I: Legal duration

Article 137:

The legal work duration assigned to employees or workers, unskilled workers, skilled workers, male or female, of any age, working by the time, by task or by piece is forty hours a week in all public or private establishments.

In the farms, the work hours are two thousand and four hundred hours a year, the weekly duration being determined statutorily by the minister in charge of labour, after consultation with the advisory labour commission.

Article 138:

The hours of work done beyond the legal weekly duration are considered extra hours and entitle the workers with a salary increase.

The execution modalities and overtime rates for day or night assignments during weekdays, Sundays and holidays are determined by the collective agreements, and failing this statutorily by the minister in charge of labour after consultation with the advisory labour commission.

Nevertheless, exemptions may be granted statutorily by the minister in charge of labour after consultation with the advisory labour commission.

Article 139:

Statutory acts taken by the minister in charge of labour after consultation with the advisory labour commission determine the application of the legal duration of work its exemptions for each branch of activity and professional category, if need be.

They also determine the maximum duration for overtime work which can be done in case of urgent or exceptional work and seasonal work.

Section 2: Night time work and shift work

Article 140:

The hours during which the work is considered as night time work are decided statutorily.

Article 141:

Shift work is the organisation system through which a worker does his/her daily work in one go.

The continuity of the job and the organizational system are determined statutorily by the minister in charge of labour, after consultation with the labour commission.

Section 3: Employment of women

Article 142:

The female worker cannot be assigned activities likely to undermine her capacity of reproduction or, in case of pregnancy, her health or that of her child.

The nature of these activities is determined by a decree taken in Cabinet meeting after consultation with the national technical consultative labour committee in charge of labour security and health.

Article 143:

A female worker who usually occupies a work position acknowledged by a relevant authority as dangerous for health has the right, when she is pregnant, to be moved without salary reduction to another position that is not prejudicial to her state.

This right is also granted, in individual cases, to any women who provides a medical certificate showing that a change in the nature of her work is necessary in the interest of her health and that of her child.

Article 144:

Any pregnant woman, whose state has officially been noticed, has the right to suspend her work based on medical prescription without this interruption of work be considered as a cause of breach of contract.

Article 145:

The pregnant woman benefits from a maternity leave of fourteen weeks of which eight weeks earlier and later four weeks before the presumed date of delivery, whether the child was born alive or not.

A woman cannot benefits from a maternity leave of more than ten weeks from the effective date of delivery, except in case of premature delivery.

The maternity leave may be extended to three weeks in case of sickness officially noticed and resulting from the pregnancy or delivery.

Article 146:

During these fourteen weeks, the pregnant woman has the right to benefit from delivery charges and medical health care in a public health centre or a health centre approved by the government, supported by the social security institution.

She also benefits from her salary submitted to the social security contributions which she was receiving during the suspension of the contract, the portion of the salary not submitted to the contributions being supported by the employer.

She keeps the right to the allocations in kind.

Article 147:

The employer cannot dismiss a woman on maternity leave. He can never, even with her agreement, employ her within the six weeks that follow her delivery.

Any convention contrary to that is null and void.

Article 148:

The mother has the right to breaks for breastfeeding over a period of fourteen months, starting from the date she resumes work.

The total duration of these breaks cannot exceed one and a half hour a day.

The breaks for breastfeeding are remunerated and counted in the work duration.

Section 4: Employment of child and teenager

Article 149:

Children and teenagers cannot be assigned activities liable to undermine their development and their capacity of reproduction.

The nature of activities prohibited to children and teenagers as well as the categories of enterprises prohibited to people aged under eighteen are determined by decree taken in Cabinet meeting after consultation with the national technical consultative committee in charge of labour security and health.

Article 150:

Under the provisions of this law:

1. the term child refers to any person under eighteen;
2. The term teenager refers to any person aged eighteen to twenty.

Article 151:

The duration of night rest for children must be at least of twelve consecutive hours per day.

Nightly employment of children is prohibited.

An exemption may be made to this prohibition for people aged more than sixteen in the case of force majeure.

Article 152:

The minimum age of access to any type of employment or work must not be less than sixteen.

Nevertheless, an exemption can be made to this minimum age when it is about light work.

A statutory decision of the ministry in charge of labour defines the conditions and execution modalities of these activities after consultation with the national technical consultative committee in charge of occupational security and health.

Article 153:

The worst forms of child labour are prohibited. This provision is of public law.

Under the present law, the worst forms of child labour include mainly:

1. All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

1. The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
2. The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined by the international treaties;
3. Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

   The list of these activities is determined by a decree taken in Cabinet meeting after consultation with the workers' and employers' organizations which are the most representative by professional branch and consultation with the national technical consultative committee in charge of labour security and health.

Article 154:

The child and the teenager cannot be assigned activities that are recognized to be beyond their force.
Failing that, the contract of employment is terminated with payment of the legal rights.

The labour inspector can require examination of the teenagers by a **registered** physician, in order to check if the work they are assigned is not beyond their force.
This requisition is legal if requested by the teenager, his/her parents and guardians.

CHAPTER II: THE WORKER'S REST

Section 1: Weekly rest

Article 155:

The weekly rest shall be compulsory. It is twenty-four hours minimum a week and is taken in principle on Sunday except derogation statutorily granted by the minister in charge of labor.

Section 2: Leave

Article 156:

The worker has a right to a paid leave chargeable to the employer, at the rate of two and half calendar days per month of effective service, except more favorable provisions of collective agreement or individual contract.

The workers aged less than eighteen years have a right to a leave of thirty calendar days without pay if they apply for it, whatever the duration of their services.

This leave comes in addition to the paid leave acquired because of the work accomplished at the time of their departure.

For the calculation of the duration of the leave acquired, the absences for industrial accident or occupational disease, the periods of rest for pregnant women as provided in article 145 above, in the limit of one year, the absences for illnesses duly certified by a registered physician are not deducted.

Article 157:

The duration of the leave provided in article 156 above is increased at the rate of two workdays after twenty years of continuous services or not in the same enterprise, of four days after twenty five years and six days after thirty years.

Article 158:

The salaried women or apprentices aged less than twenty-two years have a right to two additional leave days for every dependent child.

The increase of leave leads to an increase of the paid leave allowance.

The services done, without any corresponding leave for the same employer, whatever the employment place, are also deducted, on the basis as indicated above.

Article 159:

Exceptional permissions that have been granted to the worker on the occasion of domestic events directly related to his/ her family are not deducted from the duration of the paid leave in the yearly limit of ten workdays.

Article 160:

For his/her child's care, any worker can get from his/her employer a non-paid leave of six months, renewable once.

The employer should grant it to him/her provided that the concerned person fills his application for vacation at least one month before the outgoing date.

In case of serious illness of the child, the period provided in paragraph 1 above can be extended to one year, renewable once.

In these conditions, the deposit delay of the application provided in paragraph 2 above doesn't apply.

Article 161:

In order to facilitate the workers' representation in the statutory assemblies of their union organizations or the regional or international union organizations to which they are affiliated, permissions are granted to them on presentation of a written and nominative invitation by the concerned organization, one week at least before the planned meeting.

These absences are paid in the limit of twenty workdays the year and are not deducted from the paid leave.

Article 162:

Permissions without pay are granted to the worker, in the limit of fifteen workdays non deductible from the paid holiday, in order to allow him/ her to:

1. follow an official training related to improvement, cultural or sport education ;

2. represent an association recognized as being a public utility one, to participate or to attend to its activities ;

3. represent Burkina Faso in an international sports or cultural competition.

The suspensions of contracts resulting from the paid leave and the application of points 1 to 3 above cannot exceed three times in the same civil year.

Permissions are granted on request of the competent ministry or the entitled institution.

Article 163:

Special leaves, other than those provided in articles 160 to 162 above, granted in addition to the legal holidays, can be deducted from the paid leave if they are not subject to a compensation or recuperation of the days thus granted.

Article 164:

The minister in charge of labour, after consultation with the advisory labour commission determines statutorily the modalities related to paid leaves system particularly with regard to the planning of the leave, the calculation of the leave allowance and the enjoyment of the leave.

Article 165:

The right to enjoy the leave is acquired after a minimal period of a twelve months effective service.

However, the collective agreement or the individual contract, bestowing a leave longer than the one provided in the article 156, can prescribe a longer duration of actual service giving right to a leave without this duration being superior to three years.
In this case, a minimum leave of six calendar days deductible must be granted to the worker every year.

Article 166:

Compensation in lieu of leave shall be granted to the worker in case of breach or expiration of the contract before this one acquires right to the leave.

This compensation is calculated on the basis of the vested rights, in accordance with article 156 above or with the provision of the collective agreement or the individual contract.

Article 167:

The worker hired for the hour or the day for a short period not exceeding one day, gets his/her allowance of leave at the same time as the wages acquired, not later than the end of the day, as a compensation in lieu of leave.

Article 168:

The compensation in lieu of leave of the daily worker's paid leave is equal to a twelfth of the remuneration acquired by the worker during the day.
It must appear inevitably on the pay slip as a distinct mention of the wages.

Article 169:

The worker is free to spend his/her vacation in the country of his/her choice.

Article 170:

The employer shall pay the worker, before his/her departure on leave and for the whole duration of the leave, an allowance that is at least equal to the average of the wages and the various elements of remuneration defined in article 191, which the worker benefited from during the twelve months that preceded the date of the departure on leave.

Article 171:

The collective agreement or the individual contract can exclude the compensation provided in article 185 below from the remuneration taken into account for the calculation of the leave allowance.

For the workers who benefits from this compensation, the duration of the leave is increased with the traveling time.

In the absence of contrary convention, the traveling time cannot be longer than the time necessary to the worker to go on leave to his/her usual residence and to come back in case of need.

Section 3: Travels and transports

The employer supports the travelling expenses of the worker, his/her spouse and dependent children who usually live with him/ her as well as the transport costs of their luggage. :

1. from the place of usual residence to the work place ;

2. from the work place to the usual residence in the following cases :

    a. expiration of the fixed-term contract ;

    b. termination of the contract, when the worker acquired right to the leave in the conditions provided in article 156 above ;

    c. breach of contract because of the employer or following a gross misconduct on his part;

    d. breach of contract because of force majeure ;

    e. breach of the probation contract imputable to the employer ;

3. from the work place to the usual residence and vice-versa, in case of normal leave.

The return to the work place occurs only if the contract has not expired before the end of the leave and if, on this date the worker is able to resume his/her service.

However, the contract of employment or the collective agreement can provide a minimal duration of the worker's stay below which, the families' transport is not chargeable to the employer.
This duration does not exceed twelve months.

Article 173:

When a contract is terminated due to reasons other than those provided in article 172 or due to the worker' gross misconduct, the return transport costs chargeable to the enterprise are proportional to the worker's period of service.

Article 174:

The travel class and luggage weight are the same for all the workers.

However, the family's charges are taken into account in the calculation of the luggage weight.

Article 175:

The ways and means of transport are chosen by the employer, except if the parties decide otherwise.

The workers who uses a more expensive means of transport than those regularly chosen or approved by the employer is supported by the enterprise only up to the expenses allocated to the means regularly chosen. If he/ she uses a more economic way or means of transport, he/ she can only claim the reimbursement of the expenses incurred.

The travel time is not included in the maximum duration of the contract as provided in article 54 above of this act.

Article 176:

In the absence of a contrary convention, the worker who uses a less fast way or means of transports than those regularly chosen by the employer cannot claim any longer travel time than those indicated in the normal ways and means.

If he/ she uses a faster way or means of transport, he/ she continues to benefit, in addition to the leave duration itself, from the time that should have been necessary with the use of the way and means chosen by the employer.

Article 177:

The worker who has stopped his/ her service can require from his/ her former employer, to put at his/ her disposal the transport tickets he/ she is entitled to, within two years starting from the work cessation at the aforesaid employer's.

The latter gives the worker an attestation establishing the exact detailed account of the employer's rights concerning transport on the day of the contract breach.

Articles 178:

The worker who has stopped work and is waiting for the means of transport designated by his/her employer to return to his/her usual residence has the right to compensation.

This compensation corresponds to the wages and all advantages that he/ she would have received if he/ she had continued to work until his/her embarking.

Article 179:

The worker whose contract is signed or whose leave is expired, but remains available to the employer in the waiting for the transport means that will allow him/ her to leave his/her usual residence to join his/her work place, receives from the employer, during this period, a compensation calculated on the basis of the leave allowance.

Article 180:

In case of death of the expatriate or the transferred worker or of one his/her family member whose travel was supported by the employer, the repatriation of the corpse to the usual residence is supported by the employer.

Section 4: Legal holidays

Article 181:

Legal holidays are those provided by the Law.

CHAPTER III: WAGES

Section 1: Determination of wages

Article 182:

For the same type of work and level of proficiency, workers shall be entitled to the same wages, irrespective of their origin, sex, age and status.
For lack of collective agreement or in their silence, the wages are fixed by common consent between the employer and the worker.

The determination of the wages and fixing of the remuneration rates must respect the principle of equal remuneration between the masculine and the feminine manpower for a piece work of equal value.

Article 183:

The worker transferred from his usual residence for the execution of a contract of employment who cannot, by his/her own means, obtain a decent housing for him/ her and his/her family has the right to a housing from the employer.

The terms and conditions of granting it and its reimbursement are statutorily fixed by the minister in charge of labor, after consultation with the advisory labour commission.

The statutory text also fixes the reimbursement terms of this benefit to the employer and the conditions to which the housing must be submitted, particularly concerning labour security and health.

Article 184:

In case the worker cannot by his/her own means, to get for him and his/her family, a regular supply for basic food products, the employer must provide them for him in the conditions set statutorily by the minister in charge of labour, after consultation with the advisory labour commission.

The statutory text also fixes the reimbursement terms of this benefit to the employer.

Article 185:

The labour collective agreement or, failing this, the individual contract of employment, can provide an allowance destined to compensate the worker for the additional expenses and risks due to his/her stay at the work place:

1. when the climatic conditions of the region of the work place are different from those of the worker's usual residence ;

2. if for the latter this causes particular charges, because of his/her being far from the place of his/her usual residence.

Article 186:

Compensation is granted to the worker if he/she is compelled by occupational obligation to a temporary transfer out of his/her usual place of employment.

The applicable compensation is fixed by the collective agreement or, failing this, the individual contract of employment.

Article 187:

Decrees taken by Cabinet meeting, after consultation with the advisory labour commission, determine:

1. the guaranteed inter-professional minimum wages according particularly, to the general wage level in the country and the cost of living and considering the economic factors ;

2. the composition, assignments and functioning of a national commission for the guaranteed inter-professional minimum wages ;

3. the cases, in which other supplies than those, aimed at in articles 183 and 184 must be conceded, their assignment terms and the rates of reimbursement rates;

4. possibly the assignment terms of benefits in kind, notably for farm lands.

In the absence of collective agreement or in their silence, a decree taken in Cabinet meeting also fixes:

1) the occupational categories and the corresponding minimum wages ;

2) the seniority and output premiums eventually.

Article 188:

The rate of remuneration for piecework shall be calculated so that it provide a worker, with a wage at least equal to that of the worker engaged in similar work and paid by unit of time.

Article 189:

No wage shall be paid to a worker in case of absence, apart from cases provided by the regulations and except agreement between the parties.

Article 190:

A joint commission with equal representation (Employers' Association / federation of unions) in charge of wages negotiations and working conditions in the private sector has been created.

The composition, organization and functioning of this joint commission are provided by a statutory act taken by the ministers in charge of labor and the private sector after consultation with the labour commission.

Article 191:

When the remuneration for the services are constituted, in full or in part, by commissions, bonuses and various benefits or representative compensation of these benefits, insofar as, these don't constitute a reimbursement of expenses, they are taken into account for the calculation of the remuneration during the leave period, the compensation in lieu of notice, the damages.

The amount to take in consideration therefore is the monthly average, calculated on the last twelve months of activity, the elements defined in the previous paragraph.

Article 192:

Wages shall be payable in legal tender in Burkina Faso. Any stipulation to the contrary shall be null and void.

The payment of all or part of the wages in alcohol or in alcoholic drinks is strictly prohibited.

The payment of all or part the wages in kind is also prohibited, subject to provisions of articles 183, 184 and 187 above.

Article 193:

The pay is received at the workplace, except in case of force majeure.

Under no circumstances, can it be made in a drinking establishment or in a shop, except for the workers who are normally assigned there, nor on the day when the worker has the right to rest.

Article 194:

Wages shall be paid at regular intervals that should not exceed fifteen days for the workers hired the hour or the day and the month for the workers hired the month.

However, the daily worke, hired the hour or the day is paid every day immediately after the end of his/her work.

Monthly payments shall be made not later than eight days following the end of the month of employment in respect of which the wages are due. The two week's payments shall be made not later than four days following the end of the two weeks giving right to the wages. This time-limit is brought back to two days in case of weekly payment.

The minister in charge of labour statutorily determines the professions for which practices provide a different payment periodicity, after consultation with the advisory labour commission.

Article 195:

For all piece-work or by the output the execution of which must last more than about fifteen days, the dates of payment can be fixed by mutual agreement, but the worker must get about every fifteen days, some deposits corresponding at least to 90% of the minimum wage and be fully paid about fifteen days that after the end of the work.

The commissions acquired during one quarter must be paid in the three months following the end of this quarter.

The profit sharing achieved during a fiscal year must be paid in the nine months that follow the end of the fiscal year.

Article 196:

The wages and fringe benefits, bonuses and compensation of all kind due to the worker must be paid right at the end of the contract, in case of termination or breach of the contract of employment.

However, in case of litigation, the employer can get the president of the court dealing with labour disputes, to take a temporary immobilization from the clerk of court dealing with labour disputes, all or part of the distrainable fraction of the amounts due.

The employer requests the president of the court dealing with labour disputes through a written or oral declaration submitted to the court clerk, at the latest on the service cessation day.

The request is immediately transmitted to the president of the court dealing with labour disputes who fixes the nearest audience date, even hour by hour.

The parties are called in immediately as mentioned in articles 345 and 346 below.

They must be physically present on the day and at the hour fixed by the president of the court. They can be assisted or represented in accordance with the provisions of article 347 below.

The decision is immediately enforceable in spite of opposition or appeal.

Article 197:

Whatever the nature, the duration of the work, the amount of the remuneration acquired, all wages payment must, except derogation, be granted individually by the labor inspector of district, subject to the issuance of a relevant paper called pay slip filled and certified by the employer and given to the worker.

All the mentions carried on the pay slip are reproduced inevitably in a register called payroll or recorded in a file or computerized listing.

When the pay slip is removed from a counterfoil-book with fixed pages carrying a continuous numbering, this counterfoil-book is worth a payroll.

The payroll or any other material or computer medium serving as evidence are kept by the employer in the enterprise, in the same conditions as the bookkeeping vouchers and must be presented immediately to any requisition of the labour inspection, even in the absence of the enterprise manager.

Article 198:

The form of the pay slip and payroll is fixed statutorily by the minister in charge of labour, after consultation with the advisory labour commission.

Article 199:

It cannot be opposed to the worker, the mention “for balance of all account” or all equivalent mention subscribed by him/ her under execution or after the termination of his/her contract of employment and by which the worker gives up all or part of the rights resulting from his/her contract of employment.

Article 200:

The acceptance, without protest or reserve, by the worker, of a pay slip cannot be worth his/ her renunciation of the payment of all or part of the wages, of the supplementary wages, the bonuses and the compensation of all kind that are due to him/ her in pursuance of the legislative, statutory and contractual provisions. It can neither be worth any account balance.

Article 201:

In case of contest on the payment of the wages, the bonuses and the compensation of all kind, the non payment is presumed of irrefragable manner, except in case of force majeure, if the employer is not able to produce the payroll duly signed by the worker.

Section 2: Privileges and guarantees of wages claims

Article 202:

Wages are the benefit given to the worker by the employer in counterpart of his/her work in pursuance of the provisions of sections 2 and 3 of this chapter.

The wages consists of the basic pay, whatever its denomination and the supplementary wages, particularly, the paid leave allowance, the bonuses, the compensation and the benefits of all kind.

Article 203:

The wages claims and other claims of the worker that result from the contract of employment benefit from a super privilege than all other general or specific privileges including those of the State Treasury and the Social Security with regard to wages not liable to attachment the aforesaid wages as it results from the provisions of article 214 below.

This super privilege applies on the debtor's personal property and real estate**.**

Article 204:

The amounts withheld by the State Treasury after cessation of payment, from payment warrants due to the employer shall be paid unto the asset, in case of liquidation under court supervision of the enterprise.

Article 205:

The official receiver or the liquidator pays the workers' claims within ten days after the liquidation under court supervision and on simple order of the judge commissioner.

The judge commissioner has an eight-day deadline from the production of the workers' claims to issue his/her order.

In the event he/ she does not have the necessary funds, these claims must be paid from the first cash inflow before all other debts, as indicated in article 203 above.

Article 206:

In case the workers' claims are paid thanks to an advance made by the official receiver, the liquidator or all other person, the lender is subrogated in the worker's rights.

The lender must be repaid as soon as there is inflow of the necessary funds, without another **claim** being able to stop it.

Article 207:

The worker accommodated by the employer before the liquidation under court supervision continues to be accommodated until the date of payment of his/her last claim or, possibly, until his/her departure date to get back to his/her usual residence.

Article 208:

The worker who keeps the enterprise property can exercise the retention right in the conditions provided by the law in force.

The furniture given to a worker particularly for shaping, repair or cleaning and that have not been taken back in a six-month delay can be sold in the conditions and forms determined by the law in force.

Article 209:

The worker benefits from a legal assistance for the seizure-attribution procedure before the common law jurisdictions.

Section 3: Limitation of the action of recovery of wages

Article 210:

The workers' action for recovery of wages, supplementary wages, bonuses and compensation other than those indicated in article 75 above, of all amount due by the employer to the worker and for service delivery in kind and possibly for their reimbursement are limited to two years.

The limitation starts from the date the wages are claimable. It is suspended when there is settlement of account, schedule, obligation or summons under validity or in case of attempt at conciliation before the labour inspector.

Article 211:

The worker, whom the limitation is opposed to, can submit the oath to the employer or to his/her representative to know whether the wages he/ she is claiming have been paid.

The oath can be submitted to the surviving spouses and heirs or to the latter's legal guardian if they are under age, so that they can declare whether they know or not that the claimed wages are due.

Article 212:

The action for wages payment is limited at the end of five years if the submitted oath is not taken or if it is recognized, even implicitly, that the claimed sums have not been paid.

Section 4: Deductions from wages and pensions

Article 213:

It is prohibited for the employer to fine the worker for any reasons. This provision is of law and order.

Article 214:

No deduction on the remunerations can be made except by seizure-attribution or voluntary transfer, subscribed before the jurisdiction of the residence place or failing this, the labour inspection.

It is the same as for the reimbursement of advance money given to the worker by the employer, with the exception of the obligatory withdrawals and consignments provided in the collective agreement.

However, when the jurisdiction or the labour inspection is located at more than twenty five kilometers, an agreement between the parties can be certified in writing before the chief of the nearest administrative district.

There can be compensation between the remuneration and the amounts due by the worker only in the limit of the distrainable part and on the only sums tied up.

Article 215:

The portions of wages and pensions that are subject to progressive withdrawals for the refunding of claims as well as the pertaining rates are determined statutorily by the minister in charge of labour after consultation with the advisory labour commission.

Deduction referred to in article 214 paragraph 1 above cannot, for every pay, exceed the rates statutorily fixed.

Article 216:

It is taken into account for the calculation of the deduction, the wages or the pension, the fringe benefits or the retirement pension.

The compensations which cannot be seized, the sums allocated as reimbursement of expenses and the allowances or compensation for dependents are excluded.

Article 217:

The terms of a labour agreement or contract of employment allowing all other withdrawals are by right null and void.

Article 218:

The sums deducted in violation of the provisions of article 214 above produce some interests to the worker’s profit at the legal rate from the date when these should have been paid and can be claimed by him/ her until limitation.

Article 219:

The provisions of the present chapter don't exclude the application of the measures provided by the social security legal or statutory systems.

CHAPTER IV: GUARANTEE

Article 220:

The guarantee is a contract by which a worker deposits a sum of money in his/her employer's hands at the signature of the contract of employment.

Its purpose is to guarantee the restitution of funds that this worker can lose or dissipate when carrying out of his/her functions.

Article 221:

Any enterprise manager who is given a guarantee in cash by a worker must deliver a receipt of it and must mention it in detail in the employer's register.

Article 222:

Any guarantee must be deposited within one month from its reception by the employer. Mention of the guarantee and its deposit is made in the employer's register and testified by a certificate of deposit kept available to the labour inspector.

Article 223:

The terms and conditions of this deposit as well as the list of the public funds and banks authorized to receive it are statutorily fixed by the minister in charge of labour, after consultation with the minister in charge of justice.

The savings institutions and the banks must accept this deposit and must deliver a special booklet, different from the one the employee possesses or acquires subsequently.

Article 224:

The employer can operate, in the limit of the transferable and seizable quota, deductions on the worker’s wages and fringe benefits in order to establish the guarantee, after consultation with the court dealing with labour disputes, notwithstanding the provisions of article 214 above.

Article 225:

The withdrawal of all or part of the deposit can only be done under the double consent of the employer and the worker or by one of them duly entitled by a decision of the relevant jurisdiction.

Article 226:

The employer benefits from a privilege on the worker’s guarantee in the event of appropriating the booklet or the deposit of the guarantee to third parties who would claim for seizure-attribution.

Article 227:

Any seizure-attribution claimed by the administration of the saving institutions or the bank is null and void.

CHAPTER V: WELFARE ACTIVITIES

Section 1: Company store

Article 228:

Staff store is the mechanism through which the employer directly practices sale or the transfer of goods to the workers of the enterprise for their personal needs.

Article 229:

Company store is allowed under the following conditions:

1. the workers must not be forced to take in supplies there;
2. the sale of the goods is made there exclusively cash and without any profit;
3. the accounting of the company store is entirely autonomous and subject to the control of an inspection committee elected by the workers;
4. the prices of the goods must be clearly displayed.

Article 230:

The opening of a company store, in the conditions provided in article 229 above, is subject to the authorization of the minister in charge of labour, delivered after consultation with the labour inspector of the district.

The opening of a company store can be prescribed in an enterprise by the minister in charge of labor, on the proposal of the labour inspector of the district.

Article 231:

Any trading place installed inside the enterprise is subject to the preceding provisions, except the working-class cooperatives.

Article 232:

The sale of alcohol and alcoholic drinks is prohibited in the company store as well as at the workplace except derogation granted by the labour inspection of the area.

Article 233:

The functioning of company store is controlled by the labour inspector who can prescribe the temporary closing for a maximum period of one month in the event of violation of the prescriptions.

The definitive closing of the company stores can be ordered by the minister in charge of labour after a report from the labour inspector.

***Section 2*: Other welfare activities**

Article 234:

Welfare activities such as canteens, nurseries, cafeterias, leisure places, can be established in the conditions defined by a joint statutory act of the ministers in charge of labour and of the social action, after consultation with the advisory labour commission.

TITRE V: OCCUPATIONAL SECURITY AND HEALTH, WELFARE SERVICES

Article 235:

The employer is responsible for implementing the measures prescribed by the provisions of the present title and for the regulations taken for their implementation.

CHAPTER I: OCCUPATIONAL SECURITY AND HEALTH

Section 1: General provisions

Article 236:

The establishment manager takes all necessary measures to ensure security and protect the physical and mental health of the workers of the institution including the temporary workers, the apprentices and the trainees.

He/ she must take the necessary measures particularly so that the workplaces, the machinery, the materials, the substances and work processes under his/her responsibility do not present any risks to the workers' health and security.

To this effect, to ensure prevention, the employer must take:

1. technical measures applied to the new facilities or the new methods at the time of their design or their setting up or technical modifications brought to existing facilities or processes ;

2. measures for the organization of the security at work ;

3. measures for the organization of health at work;

4. measures for the organization of the work;

5. measures for the workers' training and information.

In addition, he/ she must work out and implement an annual program to improve the work conditions and place.

Article 237:

When the workers of several enterprises are present at the same workplace, their employers must cooperate for the implementation of the instructions related to labour security and health.

They must inform each other and inform their respective workers about the occupational hazards and measures taken to prevent them.

Article 238:

When the measures taken according to article 236 above are not sufficient to guarantee the workers' security or health, individual protective measures against occupational hazards must be implemented.

When these protective measures require the use by the worker of suitable equipment, this one as well as the necessary instructions for its use and its optimal maintenance are provided by the employer.

In this case, no worker must be admitted to his/her work place without wearing his/her individual protective equipment.

Article 239:

The use of procedures, substances, machinery or material specified by the regulation and causing the workers' exposure to occupational hazards at the workplace, must be written and reported to the labour inspector.

This must be the rule each time new machinery or new facilities are put in service, if they had been significantly modified, or when new procedures are introduced.

The labour inspection, in collaboration with the services of the medical labour inspection or any other competent body, can subordinate this use to the respect of some convenient provisions or prohibit it when for him/her, the worker' s protection does not seem to be guaranteed.

Article 240:

Any machine, material or equipment the faultiness of which is likely to cause an accident, must be checked at least once in the quarter.

The result of the check is written in a register called security register opened by the employer and constantly made available to the labour inspector.

The list of the facilities submitted to the periodic checks is statutorily fixed by the minister in charge of labour after consultation with the advisory labour commission.

Article 241:

The workplaces must be submitted to regular inspections in the terms and conditions fixed particularly by the authority concerned in order, to verify the security of the equipments, facilities and to supervise the risks for health at the workplace.

Article 242:

The workers must be informed and educated in a complete and comprehensible way on the occupational hazards existing at the workplace and receive appropriate instructions on the available means and the suitable behavior to prevent them.

For this reason, the employer must organize for them a minimal general training concerning labour security and health.

Article 243:

Any employer must organize a convenient and suitable training on occupational security and health for the newly hired worker, for those who go to another workplace or change the work technique and those who resume their activity after a more than six month work interruption.

This training must be up-dated for the whole staff in case of modification of the labour legislation, regulation or processes.

Particular actions of security training are also conducted in some institutions according to the risks existing.

Article 244:

In the workrooms or building sites where more than twenty-five people work permanently, two or three persons must get the necessary training to manage the first aid care.

Article 245:

The labour safety and health measures as well as the training or information actions provided in articles 242 and 243 are supported by the employer.

Article 246:

The employer must report to the social security institution and the labour inspection of the district, within two workdays, any occurrence of industrial accident or occupational disease in the enterprise.

The terms and conditions of this report are fixed by the legislation applicable to the industrial accidents and occupational diseases.

Article 247:

The workers must:

1. strictly abide by the hygiene and security orders at the workplace;

2. immediately inform their direct hierarchical supervisor or the labour security and health committee and the labour inspector of the district, of any situation presenting a serious and imminent threat to their life or health. In this case, the employer must immediately take any useful measure to solve this problem.

The employer cannot ask the worker to resume his/her job at the workplace as long as that risk persists;

3. submit to the medical examinations and exams prescribed by the regulation ;

4. contribute to the respect of the obligations falling to the employer on occupational security and health.

Article 248:

Statutory acts taken after consultation with the national technical consultative committee in charge of occupational security and health define:

1. the specific and general protection, prevention and salubrity measures, applicable to all enterprises;

2. the measures related to the organization and the functioning of the institutions whose mission is to help comply with hygiene and security recommendations and contribute to the improvement of the working conditions and the protection of the worker' s health;

3. the measures related to the exhibition, sale or transfer of the machinery, devices and various facilities presenting some threat to the workers;

4. the measures related to the distribution and use of substances or industrial preparations presenting some threat for the workers;

5. the particular prescriptions for some professions or some types of materials, dangerous substances, work methods or installation or some categories of workers.

Section 2: Labour, security and health committees

Article 249:

The employers must create a labour security and health committee in the establishment occupying at least thirty workers.

However, the labour inspector can order the creation of a labour security and health committee n an establishment occupying less than thirty workers, when this measure is necessary, particularly because of the nature of the works, the arrangement or the equipment of the premises.

Article 250:

The labour security and health committee assists and counsels the employer and if necessary, the workers or their representatives in the development and implementation of the yearly security and health program at work.

Article 251:

The staff's representatives in the labour security and health committee benefit from a training necessary to carry out their missions, supported by the employer.

This training is renewed whether they exercised their mandate for six consecutive years or not.

Article 252:

The employer annually submits to the labour security and health committee and the staff's representatives, a report on the labour security and health in the enterprise, in particular on the adopted and executed provisions for the previous year.

Article 253:

The composition, organization and functioning of the labour security and health committee are fixed by joint statutory act of the ministers in charge of labor and health consultation with the national technical consultative committee for security and health.

Article 254:

The employer must establish a security service at the workplace in the industrial enterprises occupying at least fifty workers.

This service is placed as much as possible, under the responsibility and supervision of a staff having got an adequate training in the field of occupational security and health. He/she assists the labour security and health committee in the execution of its tasks.

Section 3: Occupational Health Services

Article 255:

Any employer established in Burkina Faso must ensure the sanitary cover of his/her workers, in accordance with the conditions defined by the regulations on the organization and functioning of labour security and health.

To this effect, he/ she must become affiliated particularly to the office of workers' health or to any other labour health structure certified by the minister of health.

Article 256:

The occupational health service is in charge of the risk prevention at the workplace.

It is charged of counseling the employer, the workers and their representatives on the requirements necessary to establish and maintain a sure and healthy work environment on the one hand and the adaptation of work to the workers' capacities on the other hand.

Article 257:

The missions of the occupational health service are, particularly:

1. to ensure the workers' protection against any health risk that can result from their work or conditions in which it takes place ;

2. to contribute to the establishment and maintenance of a safe and clean work environment, appropriate to encourage an optimal physical and mental health in relation with work;

3. to contribute to the adaptation of the workplaces, the techniques and the rhythms of work to the human physiology;

4. to supervise health workers' health in relation with their workplace;

5. to contribute to the workers' sanitary education for a behavior in line with the occupational security and health standards and regulations, and also the prevention against HIV;

6. to assure the first aid and emergency cares.

Article 258:

The occupational health service must be situated at the workplaces or close by. It can be organized, either for only one enterprise, or a service for several enterprises.

Article 259:

The expenses pertaining to the occupational health service are supported by the employer.

In the case of service common to several enterprises, these expenses are shared in proportion to the number of workers.

Article 260:

The employer has the responsibility to inform the occupational health service on the characteristics of the machinery and tools, the methods and manufacturing processes, the products used or handled, the characteristics of the population at work place and the working conditions.

Article 261:

The employer must bring his/her workers to medical checks and exams prescribed by the national legislation and the regulation, particularly the medical checks required in hiring, the regular checks, checks for special surveillance, work resumption, or contract end.

The time spent for the medical checks and additional exams are considered as actual working time.

The HIV detection test must by no means be required during these different medical checks and prescribed exams. However, the voluntary and anonymous test is encouraged.

The expenses of the medical examinations mentioned above and the additional checks considered useful to decide on the worker's medical faculty at his/ her workstation are supported by the employer.

Article 262:

The terms and conditions of realization of these checks and exams are determined by a joint statutory act from the ministers in charge of labour and health after consultation of the national technical consultative committee in charge of occupational **s**ecurity and health.

Article 263:

When a worker's maintenance at a place is advised against for medical reasons, everything must be done by the employer to assign him/ her to another place compatible with his/her health state.

If impossible, the worker is dismissed with payment of the rights after consultation with the labour inspector of the district.

Article 264:

The organization, functioning and the means of operation of the occupational health services are fixed by joint statutory act of the ministers in charge of labour and health after consultation with the labour security and health national technical consultative committee.

Section 4: Inspection

Article 265:

The labour inspector controls the respect by the employer of the provisions related to occupational security and health.

Article 266:

The labour inspector who notices a violation of the standards or prescriptions defined, orders the employer to conform to them.

In addition, when dangerous working conditions exist for the workers' security and health as provided in article 248 above, the employer is ordered by the labour inspector to remedy them in the terms and conditions provided in article 267 below.

The labour inspector's formal notice is immediately enforceable.

However, the labour inspector's decision can be subject to an appeal according to the rules provided in with regard the administrative issues.

Article 267:

The formal notice must be made in writing, either in the employer's register, or by registered letter with notice of delivery or by any other useful way.

It is dated and signed and states the violations or threats discovered and fixes the deadlines in which they must disappear. These deadlines cannot be less than four clear days, except in case of extreme emergency.

Article 268:

A medical labour inspection is created whose competence covers the whole national territory. It is placed under the responsibility of the ministry in charge of labour.

Article 269:

The missions of the medical labour inspection are mainly to:

1. participate in the development of regulations related to occupational security and health;

2. control at the technical level in close collaboration with the competent services of the ministries in charge of labour and health and any other competent public or private institution, the implementation of the legislation and the regulation related to occupational security and health ;

3. control and counsel the occupational health services;

4. note any violation of the national occupational security and health regulations.

Article 270:

Any violation or infringement to the regulations that is noted by the medical labour inspection gives ground to a formal notice notified and settled according to the procedure provided in article 267 above.

Article 271:

The organization and functioning of the medical labour inspection are determined by decree taken in Cabinet meeting, after consultation with of the labour security and health national technical consultative committee.

CHAPITRE II: COMPANY WELFARE SERVICES

Article 272:

A welfare service is created in the enterprises occupying more than two hundred workers.

Article 273:

The company welfare service is a department organized within an enterprise, a private or public company for the workers and their families.

Its mission is to contribute to the improvement of the working conditions and the workers' well-being in the enterprise.

Article 274:

The assignments, organization, functioning as well as the means of operation of the welfare department are fixed by joint statutory act of the ministers in charge of labour and social action, after consultation with the labour commission.

TITLE VI: PROFESSIONAL INSTITUTIONS

CHAPTER I: TRADE UNIONS

Section 1: Purpose of trade unions and employers' associations and their establishment

Article 275:

The purpose of *trade unions and employers' associations* is the promotion and defence of their members' material, moral and professional interests.

Article 276:

Workers and employers can freely constitute trade unions or associations including people practicing the same occupation, similar professions or related occupations contributing to the establishment of determined products, without prejudging the provisions of Article 299.

Article 277:

Any worker or employer can freely join any chosen trade union or association in the framework of his/her occupation.

Article 278:

The founders of any trade union or association must submit their statutes and the names of those who, at any title, are in charge of its administration or its management.

This submission is done at the headquarters of the administrative district where the trade union or association is established when the association has a local jurisdiction.

It is done at the Ministry in charge of public freedoms, when the trade union or association has a national or international jurisdiction.

A copy of the statutes is addressed to the labour inspector of the district, to the general director of Labour and to the Prosecutor of Faso.

Article 279:

The amendments to the statutes and the changes that occur in the constitution of the trade union or association management or administration must be brought in the same conditions, to the knowledge of the same authorities.

Article 280:

Any declaration shall be accompanied with the following documents:

1. A written application signed by two founders at least;

2. three signed and legalised copies of the statutes, the rule of the trade union or the association and the minutes of the constituting meeting ;

3. Three signed and legalised copies of the nominal list specifying the quality of the people in charge of the trade union or association.

Article 281:

The members in charge of the management and the administration of the trade union or the association must be citizens of Burkina Faso or from a State with which reciprocity agreements are passed in the domain of the trade union or the association right.

All members shall enjoy their legal and civic rights.

Non national workers can be trade union leaders after staying for at least five years continuously in Burkina Faso.

Article 282:

The members in charge of the union's administration or management benefit from the protection granted to staff representatives against arbitrary dismissals and transfers.

Article 283:

Children of at least sixteen can join trade unions, unless opposition of their father, mother or guardian.

Article 284:

Workers or employers, who stopped working at their position or their occupation, subject to of having fulfilled it for at least one year, can still be members of a trade union or an association.

Article 285:

Any trade union or association member can give up at any time, notwithstanding any opposite provision.

He however keeps the membership right of assistance and retirement insurance companies for which he contributed by dues and funds payment.

Article 286:

It is prohibited to any employer to consider the membership or the non membership to a union, the exercise of a union activity for namely, recruitment, the way to run and distribute work, professional training, promotion, remuneration and the allocation of social advantages, disciplinary and dismissal measures of a worker.

Article 287:

The entrepreneur or his representatives must be neutral vis-à-vis the union organisations present in the enterprise.

Article 288:

Any measure taken by the employer in violation of the provisions of articles 276 and 286 is a wrongful one and can lead to damages.

Article 289:

A trade union representative can be appointed within the enterprise or the establishment by any union organisation regularly constituted and representing workers in accordance with the provisions of the above article 276.

Article 290:

Trade union representatives are assigned the following missions:

1. Representing the union before the head of the enterprise ;

2. Participating in collective bargaining within the enterprise.

Article 291:

Provisions of articles 313 and 314 of this Act apply to trade union representatives.

Article 292:

The mandate of the trade union representatives terminates in one of the following cases:

- When the representativeness condition is no more fulfilled or when the union decides to terminate the functions of the representative ;

- When there is breach of contract, resignation from the mandate or loss of the required conditions for the appointment.

Article 293:

The provisions of articles 276, 286 and 287 are of law and order.

Article 294:

The property of the trade union are liquidated according to the statutes or following the rules determined by the general assembly in case of voluntary, statutory dissolution or under decision of the court.

In no case, they can be distributed to members.

Article 295:

Administration can adjudicate neither on the suspension nor on the dissolution of workers' union and employers' association. Their dissolution can occur only by legal means.

Section 2: Civil capacity of trade unions and employers' association

Article 296:

Trade unions and employers' association, constituted according to the provisions of this Act, are legal entities.

They can:

1. Exercise all rights reserved to a private party associating in a court action with public prosecutor before any courts ;

2. allocate part of their resources to the building of workers' housing and the purchase of real estate assets ;

3. create, administer or subsidise such activities as :

    - social insurance institutions;
    - social security funds ;
    - laboratories ;

4. experiment fields ;
5. scientific, agricultural or social education activities, courses and publications interesting the profession ;

6. subsidise cooperative production or cooperative stores societies as well as all public or private institutions presenting some interest to workers ;

7. sign contracts or agreements with any other trade unions or employers' association, companies ,undertakings, or persons. Collective labour agreements are established in the conditions specified in chapter X of title 3 of this Act.

The buildings and furniture necessary to unions for their meetings, their libraries and their professional instruction courses are untouchable.

Article 297:

Trade unions or employers' association must be consulted on all disputes and issues related to their profession or the branch of activity.

Article 298:

In contentious cases, the opinions of trade union are made available to the parties which can get them in the forms of communication and copies.

Section 3: Federation of trade unions and employers' association

Article 299:

Trade unions and employers' association regularly constituted can freely consult for the study and the defence of their professional interests.

They can constitute themselves into federations at the national or local level.

The rights and obligations of trade unions and employers' association set by this Act are recognised to federations of trade unions and employers' association.

Article 300:

The provisions of articles 275 to 296 of this chapter are applicable to federations of trade unions which must communicate the name and the headquarters of the member trade unions.

The statutes define the rules of membership and representativeness in the leading bodies of the union.

Article 301:

The competent authorities can put premises at the disposal of federations of trade unions for carrying out their activities.

Section 4: Union Representativeness

Article 302:

The minister in charge of labour produces the list of the most representative trade unions every four years.

The elements for appreciation of the representativeness of the trade union organisation are the results of professional elections.

The organisation modalities of these elections are set statutorily by the minister in charge of Labour.

A decree passed by Cabinet meeting after consultation with the labour commission defines the forms of trade union organisations and the criteria of representativeness.

Article 303:

The decision of the minister in charge of labour defining the most representative trade unions can be appealed before the competent administrative court, within a deadline of fifteen days after the publication of the list.

In case of appeal, the file provided by the minister in charge of Labour includes all the elements of appreciation collected and the advice of the ministry's technical services.

The appeal is not suspensive of the decision made by the minister in charge of labour.

Section 5: Copyrights of Trade union

Article 304:

Trade unions can register the copyright or label and claim their exclusive ownership in the conditions determined by the laws in force.

These copyrights or labels can be put on any commercial product or object to certify the origin and conditions of manufacturing.

They can be used by any person or any enterprise selling these products.

Article 305:

The use of trade union copyrights or labels shall not have the effect of violating the provisions of article 276 of this chapter.

Article 306:

Any provision of collective contract, agreement subordinating the use of the trade union copyright by an employer to the obligation by the said employer to keep or to hire only members of the trade union owning the copyright is null and void.

CHAPTER II: STAFF REPRESENTATIVES

Article 307:

The staff representatives are representatives of workers within an enterprise in charge of transmitting the claims of workers to the employer and to make the work conditions be observed.

Article 308:

The staff representatives are elected for a two-year term. They can be re-elected.

Article 309:

The minister in charge of labour, after consultation with the advisory labour commission, statutorily determines:

1. the number of workers from which the institution of staff representatives is obligatory ;

2. the number of staff representatives and their distribution on the professional plan;

3. the modalities of the election ;

4. the duration and the remuneration of the work time which the staff representatives have to fulfil their missions ;

5. the means put at the disposal of staff representatives ;

6. the conditions in which they are received by the employer or his representative ;

7. The dismissal conditions of the staff representatives by the workers who elected them.

Article 310:

The contest related to the election, the eligibility of staff representatives as well as the regularity of electoral operations depend on the President of the Court dealing with labour disputes who decides on emergencies and as a last resort.

Article 311:

The decision of the President of the Court dealing with labour disputes can be referred to the Court of Cassation.

The appeal is introduced and judged in the forms and conditions provided by the organic Act regulating the said Court.

Article 312:

Every staff representative has one substitute elected in the same conditions and who replaces him in case of motivated absence, death, resignation, dismissal, termination of the contract of employment, loss of the conditions required for the eligibility.

Article 313:

The function of staff representative shall not be a hindrance to the increase of his wages and the improvement of his regular promotion.

The staff representative cannot be transferred against his will when his mandate is going on, unless appreciation of the labour inspector of the district.

The work schedule of the staff representative is the normal schedule of the establishment.

Article 314:

Any dismissal of a staff representative incumbent or substitute planned by the employer or his representative must be submitted to the approval of the labour inspector.

Yet, in case of gross misconduct, the employer may sentence the temporary dismissed of the concerned person while waiting for this opinion.

The answer of the labour inspector shall intervene within a deadline of fifteen days, except in case of force majeure. After this term, the authorisation is deemed given.

If the authorisation is not granted, the union representative is reintegrated with the payment of the wages related to the period of suspension.

The decision of the labour inspector can be subject to a hierarchical appeal before the minister in charge of labour.

The decision of the minister can be appealed for nullification before the administrative court.

Article 315:

Provisions of the above Article 314 are applicable to:

1. applicants to the positions of staff representatives during the period between the date of presentation of the lists to the head of the establishment and that of the vote ;

2. staff representatives during the period between the end of their term and the expiration of the three months following the new vote.

Article 316:

The staff representatives are entitled with the following missions:

1. to present to the employers all individual or collective claims related to the work conditions and the protection of workers, the enforcement of collective labour agreements, the professional classifications and the wages rates ;

2. to seize the labour inspection for any complaint or claim related to the enforcement of the legal and statutory prescriptions;

3. to see to the enforcement of the prescriptions related to workers' hygiene, safety, social security and to propose any useful related measures ;

4. To communicate to the employer any useful suggestions to improve the organisation and the output of the enterprise.

Staff representatives can be assisted by a trade union representative of the enterprise in fulfilment their missions.

Article 317:

Notwithstanding the provisions of the above article 316, workers can present by themselves their claims and suggestions to the employer.

TITRE VII : LABOUR DISPUTES

Article 318 :

Labour disputes are submitted to the procedure instituted by this title.

CHAPTER I: INDIVIDUAL DISPUTES

Article 319:

The individual dispute is the conflict opposing one or many workers to their employers in the framework of the implementation of the contract of employment for the recognition of one individual right.

Section 1: Conciliation Procedure

Article 320:

Any employer or worker shall ask the labour inspector, his delegate or his legal substitute, to settle out of court the dispute that opposes him to the other party.

The labour inspector seized about an individual labour dispute, calls the parties in view of a settlement out of court by indicating the full names, occupation, address of the claimant as well as the subject of the claim, the location, the time and the day of the appearance.

The summons is served to the person or at his residence by means of an administrative agent or by any other means.

The parties can be assisted at the conciliation sessions by an employer or a worker from the same branch of activities or by any other person of their choice.

Article 321:

In case of conciliation, a conciliation report is drafted and notices the settlement of the dispute out of court.

The conciliation report contains, in addition to the ordinary mentions necessary to its validity:

1. the statement of the various counts of claim ;
2. the items on which the conciliation intervened and the sums of money agreed on for every element of claim ;
3. The counts of claim abandoned by the claimant.

The conciliation report must be drafted and signed on the spot by the labour inspector, his delegate or his legal substitute and by the parties in dispute.

Article 322:

In case of failure, a non conciliation report is drafted and signed by the labour inspector, his delegate or his legal substitute and the parties in dispute.

Express reference is made about the refusal to sign the report by one of the parties.

Article 323:

In case of partial conciliation, two reports are drafted:

1. a partial conciliation report signed by the labour inspector, his delegate or his legal substitute and by the parties on the points of agreement ;

2. A report of non conciliation signed by the labour inspector, his delegate or his legal substitute and the parties for the surplus of the request.

Express reference is made about the refusal to sign the report by one of the parties, if need be.

In all case, a certified copy of the reports is handed to the president of the court dealing with labour disputes and to the parties by the labour inspector.

Article 324:

When one of the parties in dispute does not appear before the court after two summons, a report of non conciliation by default is drafted and signed by the labour inspector, his delegate or his legal substitute and by the party present.

Article 325:

The labour inspector can issue enforceable proceedings when the elements of dispute are not contested and are related to conventional or contractual or legal wages, to paid leaves and seniority bonuses, notwithstanding the above –mentioned cases of conciliation.

Article 326:

The reports of total conciliation and partial conciliation, the enforceable proceedings issued by the labour inspector, according to articles 321, 323 and 325 above are deemed enforceable decision.

Article 327:

In the absence or in case of failure of the out-of-court settlement, the legal proceedings are introduced via written or verbal declaration made in the clerk's office of court dealing with labour disputes territorially competent.

The claimant shall produce a certified copy of the report of non conciliation.

***Section 2*: Composition of the court dealing with labour disputes**

Article 328:

The court dealing with labour disputes includes:

- one presiding judge and judges, all members of the judiciary order, appointed by decree taken in Cabinet meeting under proposal of the minister in charge of justice after consultation with the High Council of Magistracy ;

- employers assessor and workers assessor on a list set according to article 332 below ;

- A court head clerk appointed by decree taken in Cabinet meeting, of court clerks and court secretaries appointed by statutorily by the minister in charge of justice.

Article 329:

The court dealing with labour disputes includes an emergency interim body composed of the president of the court or any judge appointed by him and a court clerk.

Article 330:

The court dealing with labour disputes includes at the hearing:

- a presiding judge, magistrate ;
- two assessors including one employer and one worker ;
- one court clerk.

Article 331:

For every hearing, the presiding judge appoints the employer and worker assessors on the list prescribed by article 332 below.

The incumbent assessors are replaced, in case of impediment, by the substitute assessors.

In case one or both assessors duly called do not appear, the presiding judge sends them a second summons.

In case of absence again of one or both assessors, the presiding judge decides alone.

Article 332:

The assessors are appointed of a term of four years renewable by the ministers in charge of justice and labour after consultation with the advisory labour commission.
They are chosen on the list presented by the most representative trade union of workers and employers' association or, in the absence of the latter, by the labour inspection of the district.

The list of assessors includes an equal number of incumbents and substitutes. They can be completed, if necessary, during the period of the term.

Article 333:

The assessors must meet the following conditions;

1. be citizen of Burkina Faso or one State on the list set by the decree taken by Cabinet meeting under proposal of the minister in charge of justice ;

2. be at least twenty-five years old ;

3. be able to read and write in French ;

4. have at least three years of professional activity in the jurisdiction of the court dealing with labour disputes ;

5. not sentenced to a condemnation leading to the deprivation of the civil and civic rights.

Article 334:

Assessors take the following oath before the court dealing with labour disputes of the jurisdiction: « I swear, I will fulfil my duties with consciousness, assiduity and integrity and always keep the secret of the deliberations ».

Article 335:

The functions of assessors give right to compensation the amount and conditions of allocation of which, are set statutorily by the ministers in charge of justice and finance.

Article 336:

Any assessor who severely made mistakes related to his duties in the fulfilment of his duties is called before the court for the charges against him.

The initiative of this procedure is the responsibility of the judge presiding over the court dealing with labour disputes.
The judge presiding over the court dealing with labour disputes addresses to the minister in charge of labour the report of the appearance session within the forty days following the date of the summons.

Article 337:

The following penalties can be taken against the accused assessor by the minister in charge of justice, under proposal of the minister in charge of labour:

1. suspension for a duration which shall not exceed six months ;
2. forfeiture.

Any assessor against whom the forfeiture has been pronounced cannot be appointed again to the same positions.

Section 3: Competence of the court dealing with labour disputes

Article 338:

The court dealing with labour disputes is competent to deal with individual disputes that can rise between workers, trainers and their employers, the apprentices and their masters, during the execution of contracts.

He is also competent to deal with:

1. litigations born from the application of the social security regime;

2. individual disputes related to the application of the labour collective agreements and related orders;

3. disputes born between the workers on the contract of employment as well as direct actions of workers against the contractor provided by Article 80 of this Act ;

4. disputes born between workers and employers at the occasion of work ;

5. disputes born between the social security institutions and their liable people ;

6. challengeable actions of contractors against the sub-contractors.

Article 339:

The staffs of public services, when they are employed in the conditions of private law, depend on the competence of labour jurisdictions.

Article 340:

The labour jurisdictions remain competent when a local government or a public establishment is being questioned in term of labour disputes.

Article 341:

The competent court is that of the place of work.

For the litigations born from the dismissal, the worker has the choice between the court of the usual place of residence in Burkina Faso and that of the place of work, notwithstanding any conventional attribution of jurisdiction.

The worker recruited on the national territory has, in addition, the power of seizing the court of the place of conclusion of the contract of employment.

Article 342:

The law sets, for every court, its headquarters and its land competence.

Article 343:

The court dealing with labour disputes is under the responsibility of the ministry in charge of justice.

Section 4: Litigation Procedure

Article 344:

The procedure in term of social matters is free of charge before both the court dealing with labour disputes and the jurisdiction of appeal.

Workers additionally receive some legal assistance for the enforcement of the judgements made at their profit.

Article 345:

The president of the court, within the month that follows the reception of a claim, calls the parties to appear within a deadline that cannot exceed two months, increased if necessary, by road time frame.

Article 346:

The summons to appear shall include the full name, occupation of the claimant, the indication of the subject of the claim, the place, the hour and the day of appearance.

The summons is served to the person or at the residence by means of an administrative agent specially committed to that. It can be valuably made by registered letter with acknowledgment of receipt or by any other useful means.

Article 347:

The parties shall get to the place, day and hour set by the presiding judge of the court dealing with labour disputes.

They can be assisted or represented by one of the following persons:

1. a worker or an employer belonging to the same branch of activities ;
2. a lawyer regularly inscribed at a bar ;
3. a representative of the trade union organisations to which they are affiliates.

The employers can also be represented by one director or one worker of the enterprise or establishment.

Except the lawyers, any mandatory of the parties must have received written mandate of the principal and agreed on by the presiding judge of the court dealing with labour disputes or the social chamber.

Article 348:

If the claimant does not appear at the day set, and if it is proven that he received the summons and does not justify by a case of force majeure, the cause is removed from the role.

It is the same when after return, the claimant does not appear.

In that case, the cause can be taken again only once and according to the forms prescribed for the initial claim, if not, there will be forfeiture.

If the defendant does not appear and does not justify with a case force majeure, default is given against him and the court adjudicates on the merit of the claim.

The defendant who appeared can no more make default.

In that case, the decision is deemed contradictory and, after notification in the forms provided for in the article 354 below; only the way of the appeal is open.

Article 349:

The hearing is public. The presiding judge leads the debates and ensures the police of the hearing.

He questions and confronts the parties, makes the key witnesses appear under request of the parties or himself, in the forms indicated in Articles 345 and 346 above.

He proceeds to the audition of any person whose statement he judges useful to the settlement of the litigation. He can conduct any analysis or require an expert's opinion, or request the intervention of the police.

Article 350:

The court proceeds with the examination of the case.

No adjournment can be pronounced without the agreement of the parties.

The court can however, by motivated judgement, prescribe any investigations, inspections on the places and any useful information measures.

The charges occasioned by the investigation measures ordered are supported by the State Treasury.

Article 351:

The court deliberates in secret just at the end of the debates.

The judgements rendered shall be motivated and their hearing be public.

The minutes of the judgement are signed by the president and the court clerk.

Article 352:

The assessors of the court can be challenged in the following cases:

1. when they have a personal interest in the litigation ;
2. when they are relatives or allied of one of the parties ;
3. if, within the year that preceded the challenge, there has been a legal or penal action between them and one of the parties, his spouse or allied in direct line ;
4. if they have given a piece of advice on the claim ;
5. If they are employers or workers of one of the parties involved in the case.

The challenge is formed prior to the fundamental debate. The president adjudicates immediately.

If the challenge is rejected, the debate is allowed. If it is accepted, the case is adjourned to the next hearing of the court with a new composition.

Article 353:

The judgement can order the immediate enforcement, notwithstanding the opposition or the appeal and by reserve with exemption of guarantee, up to the amount of CFA Francs two millions (2,000,000).

For the surplus, the provisional enforcement can be ordered subject to a guarantee deposit.

The judgements rendered and ordering the provisional execution against one failing party can be executed only after the notification in the forms provided by Articles 345 and 346 above.

Article 354:

In case of default judgement, notification is made in the forms of Articles 345 and 346 above free of charge, to the failing party, by the court clerk or by an administrative agent specially committed to that by the president.

If, within a timeframe of ten days after the notification, in addition to the trip times, the defaulter does not oppose the judgement in the forms prescribed in the above Article 348, the judgement is enforceable.

In case of opposition, the presiding judge calls again the parties in conformity with the provisions of the above Articles 345 and 346.

The new judgement is enforceable notwithstanding any default or appeal.

Article 355:

The judgements of the court dealing with labour disputes are definitive and without appeal, except that of the chief of the competence, when the amount of the claim does not exceed CFA Francs two hundred thousand (200,000). Above this amount, the judgements can be appealed before the Court of appeal of the jurisdiction.

Article 356:

The court dealing with labour disputes deals with all counterclaims or claims for compensation which, by their nature, are of its competence.

When each of the main claim, counterclaim or claims for compensation is within the limits of its competence in last jurisdiction, it adjudicates in last jurisdiction.

If one of these claims is only likely to be judged only in appeal, the court dealing with labour disputes adjudicates in all but open to appeal. Yet, it adjudicates in last jurisdiction if only the counterclaim in damages, is based exclusively on the main claim, overpasses its competence in last jurisdiction.

It also adjudicates without appeal, in case of default of the defendant, if only the counter-claims formed by the latter overpass its level of competence in last jurisdiction, regardless the nature and the amount of this claim.

Article 357:

Within the fifteen days following the decision of the contradictory judgement or of the notification, the appeal can be lodged in the forms provided in Articles 345 and 346 above.

The act of appeal and the entire related file are transmitted within the timeframe of one month following the declaration of appeal to the court of appeal.
The appeal is examined according to the rules set in the following Articles 345, 346 and 347.

Article 358:

The execution of the judgements is implemented by the diligent party.

Article 359:

The judgements and decision taken in Appeal rendered at the profit of workers indicate the name of the bailiff who must act for their execution..

The appeal against the decisions rendered in last jurisdiction is introduced and judged as a civil case.

Section 5: Emergency interim procedure

Article 360:

The emergency interim body composed of the presiding judge and the court clerk can, in the limit of the competence vested to courts dealing with labour disputes:

1. order all the measures which do not go against any serious contest or which justify the existence of a dispute ;

2. grant guarantee to the debtor in the event the obligation is not seriously contestable.

Article 361:

The president of the court dealing with labour disputes can however, even in the presence of a serious contestation, prescribe the conservatory or restoration measures which are necessary, either to prevent imminent damage, or to stop a trouble that is manifestly illicit.

Article 362:

The president of the court dealing with labour disputes adjudicates in the form of emergencies interim procedures on the difficulties to enforce the conciliation report.

Article 363:

The claim in emergency order is introduced by a simple written request addressed to the president of the court dealing with labour disputes of the jurisdiction.

The latter immediately decides by order on the day and place of the hearing on which the claim is examined.

The president can summon the very next hour, either in his office, or at the hearing, or at his residence.

Article 364:

The emergency order cannot prejudice the content and has a provisional character. It has not res judicata.

It is enforceable on minute and by provision, without guarantee unless the president orders that one should be provided.

It can only be reported or modified in emergency in case of new elements.

The emergency order is signed by the president and the court clerk.

Article 365:

The emergency order cannot be subject to any opposition.

It can also be appealed. The timeframe for appeal is six days from the decision or notification of the order when one of the parties did not appear before the court.

The act of appeal is transmitted to the clerk's office of the Court of Appeal together with the impugned order or an extract of its pronouncement delivered by the clerk's office of the court dealing with labour disputes.

Article 366:

The president of the Court of Appeal or any magistrate appointed by him is competent for dealing with appeals against the orders in emergency order rendered by the presidents of the courts dealing with labour disputes.

CHAPTER II: COLLECTIVE DISPUTES

Article 367:

The collective dispute is a disagreement born in the course of the execution of a contract of employment and which opposes one or more employers to an organized or non organized group of workers for the defense of a collective interest.

Article 368:

The provisions of this chapter are applicable to the collective disputes concerning the workers defined in article 2 of this law.

They only apply to wages earners of the public services enterprises and establishments in the absence of specific legislative or statutory provisions.

Section 1: Conciliation

Article 369:

Any collective dispute must immediately be notified by the parties:

1. to the labour inspector, when the conflict is limited to the territorial jurisdiction of the labour inspection;

2. to the labour director, when the conflict extends over the territorial jurisdictions of several labour inspections.

Article 370:

The labour inspector or the labour director convenes the parties and attempts conciliation without delay.

When one of the parties does not appear, the conciliator again summons him to appear within a time period which should not exceed seven days, without prejudice to condemnation to the payment of a fine by the relevant jurisdiction upon report drawn up by the inspector or the director of labour.

Within fifteen days following the date that the labour inspector of the district or the labour director has been seized of the matter, he should write a report, noting the total or partial agreement, or the disagreements of the parties, that will countersign the official report.

The conciliation agreement is immediately enforceable. It is deposited at the clerk' office of the court dealing with labour disputes of the place of the dispute and a certified copy is addressed to the parties.

Article 371:

In the absence of agreement, the conciliator writes a situation report on the dispute accompanied by the documents and information collected by his care which he addresses to the minister in charge of labour. A copy of the report is given without delay to each party mentioning the date of the transmission to the minister in charge of labour.

Section 2: Arbitration

Article 372:

Within a maximum of ten days following the reception of the official report of non conciliation transmitted by the labour inspector or the labour director, the minister in charge of labour refers the dispute to a board of arbitration made up of the president of the Court of appeal and of two members designated on the list of arbitrators provided in article 373 hereafter.

Article 373:

The arbitrators are designated every four years on a list drawn up statutorily by the minister in charge of labour after consultation with of the advisory labour commission.

The arbitrators are selected according to their moral authority and their competence in economic and social issues with however the exclusion of operating civil servants, people who took part in the conciliation attempt and of those who have a direct interest in the conflict.
The mandate of the arbitrators is renewable.

Article 374:

The board of arbitration cannot make a decision on matters other than those determined by the non conciliation official report or of those who are the direct consequence of the dispute.

It has the most extended powers to carry out investigations. It can for this purpose:

1. engage all the investigations in the enterprise and trade unions and to require from parties, the production of any document or information of economic, financial, statistical or administrative nature likely to serve for the achievement of its mission;

2. resort to the offices of experts, in particular independent auditors and generally to any qualified person likely to throw light on the issue.

Article 375:

The sentence of the board of arbitration is notified without delay by the president of the board of arbitration to the parties as well as to the labour inspector or the labour director.

The sentence is immediately enforceable and takes effect from the day of the notification of the dispute to the relevant authority when it is not rejected by the parties or by one of them.

The enforceable sentence is communicated by the labour inspector or the labour director to the relevant clerk's office of the court dealing with labour disputes pursuant to the provisions of subparagraph 4 of article 370 above.

The sentence which acquired enforceability can be extended under the same conditions to the provisions of articles 120 and following of this law**.**

Article 376:

The enforcement of the sentence can be rejected by the parties or by either of them.

The refusal to apply the sentence is notified by written declaration given within forty eight clear hours which follow the communication of the sentence to the minister in charge of labour who delivers acknowledgement receipt.

Article 377:

The sentence of the board of arbitration can be the subject of recourse before the social Chamber of the Court of Cassation.

Article 378:

When an agreement of conciliation or a sentence of the board of arbitration relates to the interpretation of the clauses of a collective agreement, on the wages or the working conditions, this agreement or this sentence produces the effects of a collective agreement and can be submitted to the same procedure of extension.

Article 379:

The conciliation agreements, the sentences of the board of arbitration are inserted in the gazette and posted in the offices of the labour direction and labour inspection as well as the work place where the dispute was born.

Article 380:

The arbitration and conciliation procedure is free of charge.

The rate of the reimbursement of the expenses caused by the procedure, in particular the travelling expenses of the arbitrators and the assessors, the losses of wages or treatment, the consultancy fees, are fixed by the ministers in charge of labour and finance, after consultation with the advisory labour commission.

Article 381:

The arbitrators who are members of the board of arbitration are bound to the professional secrecy.

Section 3: Strike and lock-out

Article 382:

The strike is a concerted and collective suspension of work in order to support professional claims and to ensure the defense of the material or moral interests of the workers.

The right to strike does not authorize the worker to carry out his work under conditions other than those stipulated in their contract of employment or practiced in the profession and does not include disposing arbitrarily of the premises of the enterprise.

Article 383:

The strike does not terminate the contract of employment, except gross misconduct ascribable to the worker.

The fact for the striker to oppose the work of others and/or to his task being carried out by other workers, even by those who are not usually assigned there represents in particular a gross misconduct.

Any firing decided in violation of the first subparagraph of this article is null and void and the worker laid off in this case is reinstated in his employment.

Article 384:

In order to ensure a minimum service, the relevant administrative authority can, at any moment, proceed to the requisition of workers of private or public enterprises who occupy positions that are essential to the security of the people and properties, to the maintenance of law and order, to the continuity of the public utility or to the satisfaction of the essential needs of the community.

Article 385:

The list of the positions thus defined, the conditions and procedures of requisition of the workers, the notification and the ways of publication are laid down statutorily by the minister in charge of labour, consultation with the advisory labour commission.

Article 386:

The exercise of the right to strike should in no way be accompanied by the occupation of the place of work or of its immediate surroundings, under the penalty of penal sanctions provided by the legislation in force.

Article 387:

The lock-out is a decision by which an employer prohibits a worker from acceding to the enterprise during a collective labour dispute.

Article 388:

Any lock-out or any strike before the exhaustion of the arbitration and conciliation procedures set by the present law is prohibited.

These procedures do not however apply to the strikes at national scale started by the federation of trade unions

Article 389:

The lock-out or the strike undertaken in violation of the provisions of article 388 above results in:

1. for the workers, the loss of the compensation right to the notice and damages for termination of contract;
2. for the employers, the payment to the workers for the lost days due to this fact;

3. for the employers, by decision of the court dealing with labour disputes upon request of the Department of Public Prosecutor seized by the minister in charge of labour, for a period of two years:

- ineligibility to the position of members of the Chamber of Commerce;

- prohibition to belong to the Economic and Social Council, to the advisory labour commission and to a board of arbitration;

- Non- procurement contract on behalf of the State or of its sub-divisions.

Article 390:

The strike and/or the lock-out started after notification of the refusal of the sentence of the board of arbitration are considered legal and do not result in the above stated consequences.

TITLE VIII: BODIES AND MEANS OF EXECUTION

CHAPTER I: EXECUTING BODIES

Article 391:

The labour inspection, placed under the authority of the minister in charge of labour, is in charge of all the issues relating to the conditions of the workers and the professional relationships.

The labour inspector:

1. takes part in the development of the regulations within his sphere of competence;

2. sees to the enforcement of the provisions enacted in the area of labour and of the protection of the workers;

3. enlightens by his advice and recommendations the employers and the workers;

4. refers to the relevant authority the violations and abuses which are not specifically covered by the existing legal provisions;

5. takes part in the coordination and the control of the services and organizations contributing to the application of the social legislation;

6. engages any studies and investigations related to the various social problems, other than those which concern the technical departments with which the labour inspection collaborates.

Article 392:

The State must make available to the labour inspection, human and material resources needed to ensure its good operation.

The services in kind of the labour inspectors are statutorily set by the law.

Article 393:

The labour inspectors, before their entry into office, swear the following oath in front of the Court of appeal sitting in solemn audience: "I swear to faithfully and correctly fulfill my mission and not to reveal, even after having left office, the trade secrets and in general the processes of exploitation that I could come to know in the performance of my duties".

Any violation of this oath is punished in accordance with the legislation in force.

Article 394:

The labour inspectors must, under reserve of the exceptions provided by the legal or statutory provisions, keep the confidentiality of their source of information indicating a defect in the installation or a violation of the legal and statutory provisions.

They cannot, under reserve of the exceptions provided in the legal or statutory provisions, have any direct or indirect interest in the enterprise placed under their control.

Article 395:

The labour inspectors can:

1. record in official reports infringements to the provisions of the legislation and the labour regulations. This official report has the force until prima facie evidence;

2. order or have order given that immediately enforceable measures, that can go as far as work stoppage, be taken in cases of imminent danger to the health and safety of the workers.

Article 396:

The labour inspector of district, in accordance with the present law, decides the fines which must be paid by the offender and be remitted to the Treasury. This provision is applicable to infraction of simple police.

In the event of refusal to pay, the report is drawn up in four specimens of which the first is given to the offender or his representatives, the second is deposited to the public prosecutor's department, the third is sent to the labour direction, the fourth is classified in the archives of the labour inspection.

Article 397:

The labour inspectors, with proper credentials, have the power to:

1. penetrate freely for purposes of inspection, without preliminary warning, at any hour of the day or the night, in any establishment subjected to the control of the inspection;

2. penetrate during the day in premises where they can have a reason to assume that workers are occupied;

3. require if need be, opinions and consultations of doctors and technicians, in particular with regard to the regulations of hygiene and safety. The doctors and technicians are bound to the professional secrecy under the same conditions and submitted to the same sanctions as the labour inspectors;

4. engage all the examinations, controls or investigations deemed necessary to make sure that the applicable provisions are actually observed and in particular:

    - question, with or without witnesses, the employer or the personnel of the enterprise, control their identity, ask information to any other person whose testimony can be necessary;

    - require the production of any register or document which use is prescribed by the present Law and by the acts enacted for its enforcement;

    - take samples or have samples taken for analysis of matters or substances used or handled, provided that the employer or his representative is informed of it.

The expenses resulting from these expertise and investigations are supported by the State Treasury.

The procedures and the conditions of this support are statutorily set after consultation with advisory labour commission.

Article 398:

The labour inspectors can enter a private residence of the owner of an agricultural establishment only if the owner agrees or if he is provided with a special authorization delivered by the relevant authority, except in case when this residence merges with the establishment.

Article 399:

The labour inspector while going for control of inspection, must inform the employer or his representative of his presence, unless he estimates that such information can affect the effectiveness of the control.

Article 400:

Labour controllers assist the labour inspectors in the operation of the services. They are entitled to record the infringements by official report in accordance with the provisions of article 395 above.

The labour controllers swear, in front of the relevant court dealing with labour disputes the oath mentioned in article 393 above.

Any violation of this oath is punished in accordance with the legislation in force.

Article 401:

In the mines and quarries as in the establishments and building sites where work is submitted to the control of an engineering department, the civil servants in charge of this control take care that the installations related to their technical inspection are arranged in order to guarantee the safety of the workers.

They ensure the application of the special rules which can be defined in this field and have for this purpose and within this limit, the powers of the labour inspectors. They inform the labour inspector of the district of measures prescribed and, if necessary, the formal notice in default that has been notified.

The labour inspector can, at any moment, carry out jointly with the civil servant quoted in the preceding paragraph, the visit of the mines, quarries, establishments and building sites submitted to a technical inspection.

Article 402:

In parts of establishments, or in military establishments employing civil manpower and in which the interest of national defense is opposed to the introduction of foreign inspection agents to the service, the inspection of the applicable provisions related to labour social security is ensured by the civil servant or officers statutorily appointed for this purpose by the law by the minister in charge of defense.

The nomenclature of these parties of establishments or military establishments is jointly drawn up by the ministers in charge of labour and defense after consultation with the advisory labour commission.

Article 403:

In the event of absence or inability of the labour inspector or of the labour controller, the head of the administrative district is their legal substitute.

He is entitled to record the violation in reports which the labour inspector will base upon to draw up an official report in the forms provided in article 395 above.

Article 404:

The provisions of articles 393, 394 and 395 to 398 above do not interfere with the prerogatives of judiciary police in matters of facts findings and lawsuit against violation of the common law.

CHAPTER II: ADVISORY BODIES

Section 1: Advisory Labour commission

Article 405:

An advisory labour commission is established at the level of the ministry in charge of labour.

The commission, chaired by the minister in charge of labour or his representative, is made up of employers and workers on the basis of equal representation.

The latter are designated by the most representative organizations of the employers and of the workers or by the minister in charge of labour in the event of absence of representative organizations, pursuant to the above article 302 subparagraph 3.

Article 406:

A decree taken by Cabinet meeting sets:

1. the operating procedures of the commission;

2. the number and conditions of appointment of the representatives of the employers and of the workers;

3. the duration of their mandate and the amount of the session allowances which are allocated to them.

Article 407:

The chairman of the advisory labour commission can on his own initiative or at the majority of its members consult with any qualified person, in particular in the area of economic, medical and social matters.

Article 408:

The advisory labour commission can be consulted on all matters relating to labour, workforce and social security, including the cases for which its opinion is obligatorily necessary under the present law.

It can, on the request of the minister in charge of labour:

1. examine any difficulty born during the negotiation of the collective agreements;

2. deliberate on all the issues relating to the conclusion and to the application of the collective agreements and in particular on their economic impact.

The advisory labour commission is also charged to study the criteria that could serve as basis for the determination and the readjustment of the minimum wage.

Article 409:

When the advisory labour commission is seized of one of the matters mentioned in the preceding article, it associates:

1. a representative of the minister in charge of finance;
2. a representative of the minister in charge of justice;
3. a labour inspector.

It can also call on any other person whose competence is required, in accordance with the above article 407.

Section 2: *Advisory national technical committee on occupational safety and health*

Article 410:

It is instituted at the level of the ministry in charge of labour, an advisory national technical committee on occupational safety and health responsible for the study of the areas of safety and health of workers.

Article 411:

The advisory national technical committee on occupational safety and health is responsible for making any suggestion and opinion on the regulations as regards safety and health at work place.

It can also deliberate on the orientation and the implementation of the national policy for the prevention of occupational hazards.

A decree enacted by Cabinet meeting sets the composition and the operation of this committee.

CHAPTER III: MEANS OF INSPECTION

Article 412:

Any person who proposes to open an enterprise of whatever nature must first declare it at the labour inspection of the district or at the territorially relevant Center of Procedures of Enterprise.

Must be declared under the same conditions, closure, the transfer, the change of destination, the change and, more generally, any change affecting an establishment.

The declarations referred to above in the preceding subparagraphs are carried out at the organization entitled to this effect which will transfer all necessary information to the organization of social welfare.

Article 413:

The employer must constantly have at the place of business a register of employer the model of which is statutorily fixed by the minister in charge of labour, after consultation with the advisory labour commission.

Article 414:

The register of employer must be made available to the labour inspector or to his delegate and kept for ten years following the last mention made on it.

Article 415:

The minister in charge of labour, after consultation with the advisory labour commission, can exempt some enterprises or categories of enterprises of the obligation to hold this register because of their situation, their importance or of the nature of their activity.

Article 416:

Any engaged worker, including the daily paid worker, must be declared within the eight following days, by the employer at the National Social Security Board. He is entitled to the retirement pension.

The declaration mentions the name and address of the employer, the nature of the enterprise or of the establishment, all the information useful on the civil status and the identity of the worker, his profession, employment previously occupied, possibly his place of residence, the date of entry in Burkina Faso and if necessary, the hiring date and the name of the former employer.

A copy of the birth certificate must be annexed to the declaration.

Any worker leaving an establishment must be subject to a declaration under the same conditions with specification of the departure date from the establishment.

Article 417:

The minister in charge of labour, after consultation with the advisory labour commission, determines the modalities of these declarations, the modifications in the situation of the worker which must be subject to an additional declaration and the occupational categories for which the employer is temporarily exempted of declaration.

In this latter case, a file must be opened upon request of the worker.

Article 418:

The service in charge of employment delivers a work permit to any worker for whom a file was made.

This card, established in accordance with the indications contained in the file, must mention the civil status and the occupation of the worker.

The photography of the person or, failing that, any other element of identification must, if possible, be reproduced on the card provided for in this article.

Article 419:

The conditions of delivery of the work permit are set statutorily by the ministers in charge of labour and employment after consultation with the advisory labour commission.

TITLE IX: PENALTIES

CHAPTER I: CIVIL FINES

Article 420:

Any assessor of the court dealing with labour disputes who does not appear at the audience of this court on the summons which was notified to him is punished of a civil fine of CFA Francs five thousand (5,000).

In the event of repetition, during the term of office of the assessor, the fine is carried to the double.

The court can, moreover, declare him unable in the future to occupy the function of assessor of the court dealing with labour disputes. The judgment is published at his own expenses.

The fines are decided by the relevant court dealing with labour disputes.

CHAPTER II: INFRACTION OF SIMPLE POLICE

Article 421:

Are punished of a fine of CFA Francs five thousand (5,000) to fifty thousand (50,000) and in the event of repetition of a fine of CFA Francs fifty thousand (50,000) to one hundred thousand (100,000):

1. the authors of the violations to the provisions of articles 16, 21, 29, 52, 54, 56, 57, 59, 60, 63, 79 subparagraph 2, 81 , 82, 91, 106 subparagraph 1, 134, 144 to 148, 155, 156, 159, 166, 167, 169, 172, 177, 188, 191, 194, 196, 197, 214, 221, 222, 229 , 230 subparagraph 1, 235, 238, 240, 241, 247, 249 subparagraph 1, 261, 281 subparagraph 2, 286, 287, 293, 314, 414, 416 and 428 of this law;

2. the authors of the violations to the provisions of the statutory acts in articles 14, 35, 137, 138, 139, 142, 164, 187 and 255 of this law;

3. any person who, by making use of a fictitious contract or a work permit containing inaccurate indications, had himself engaged or replaced voluntarily another worker;

4. any employer who omitted to make the declaration provided in article 246 above.

The fine is as many times as there are registrations omitted or erroneous on the violations to the provisions of the statutory act provided in articles 413 and 415 above.

The penalties are not incurred if the violation occurred during the establishment of the work permit in the case of the violation of the above article 149 results from an error on the age of the children and of the teenagers.

CHAPTER III: OFFENCES

Article 422:

Without damage of the penal provisions, are punished of a one month to three years prison term, of a fine of CFA Francs fifty thousand (50, 000) to three hundred thousand (300, 000) and/or only of one of these two penalties and, in the event of repetition, of a fine from CFA Francs three hundred thousand (300,000) to six hundred thousand (600,000) and two months to five years of imprisonment or only of one of these two penalties:

1. authors of violations to the provisions of articles 4, 5, 22, 36, 37, 38, 152, 182, 213, 231 and 232;

2. any person who, by whatever means or maneuver has obliged or tried to force a worker to be engaged, or who has prevented him or tried to prevent him from being engaged or to carry out his obligations imposed by his contract;

3. any employer, authorized representative or appointed, who knowingly mentioned false testimonies on the card of the worker, the register of employer or any other document due to the worker or any worker who knowingly made use of these forgeries;

4. Any person who required of or accepted from the worker any remuneration as an intermediary in the settlement or payment of the wages, allowances and expenses of any nature;

5. any person who knowingly made false statements of industrial accident or occupational disease;

6. any person who interfered with or tried to interfere, either with the free designation of a delegate of the personnel, or to the regular exercise of their functions;

7. the party or the parties who refused to go to the summons indicated under the conditions provided in article 370 of this law relating to the obligatory conciliation attempt as regards collective disputes;

8. Any employer or any worker who refused to subject himself to the procedure of amicable settlement of individual disputes provided in articles 320 and 321 of this law;

9. the party who, after having signed an official report of conciliation provided in article 321 above, would not carry out whole or part of the commitments stipulated in the aforementioned official report;

10. any person who opposed or tried to oppose the execution of the obligations or the exercise of the powers entitled to the labour inspectors, controllers and to the head of administrative district acting as substitutes for the labour inspector.

Article 423:

Is punished of an imprisonment of two months to two years, of a fine of CFA Francs three hundred and sixty thousand (360,000) to three million six hundred thousand (3,600,000) and / or only of one of these two penalties, any employer who embezzled sums or security given in guarantee.

Article 424:

The authors of violations to the provisions of article 153 of this law are punished of penalties provided in the law on the definition and **suppression** of child trafficking.

CHAPTER IV: COMMON PROVISIONS RELATED TO INFRACTIONS AND OFFENCES

Article 425:

The provisions relating to the extenuating circumstances and the deferment of the penal code are applicable to all violations indicated and repressed in the present title.

Article 426:

When a fine is decided under the terms of the present title, it is incurred as many times as there were violations, without, however, the total amount of the inflicted fines exceeding fifty times the minima rates provided above.

This rule applies in particular if several workers were employed in conditions contrary to the present law.

Article 427:

For all the violations indicated in the present law, the repetition is noted in accordance with the provisions of the legislation in force.

Article 428:

The head of enterprise are civilly accountable for the judgments in payment of the damages pronounced against their authorized and appointed representatives.

TITLE X: TRANSITIONAL AND FINAL PROVISIONS

Article 429:

Any clause of an ongoing contract of employment which is not in conformity with the provisions of this law or any statutory act taken for its application must be modified within six months from the publication of this law or the said statutory act.

In the event of refusal of one of the parties to abide by the law, the relevant jurisdiction can order to proceed, under penalty of obligation, with the modifications which are deemed necessary.

Article 430:

The collective agreement concluded before the present law remains in force in those of their provisions which are not contrary to law hereby.

These collective agreements are likely to be extended statutorily under the conditions provided in this law.

If they were the subject of extension before the present law, these rules remain in force in all that are not contrary to the provisions of this law.

Article 431:

The regulations taken pursuant to law n°033-2004/AN of September 14, 2004 related to the Labour Act in Burkina Faso remain in force in all that is not contrary to this law.

Article 432:

All contrary provisions prior this law are repealed, in particular law n°033-2004/AN of September 14, 2004 related to the Labour Act in Burkina Faso.

Article 433:

The present law will be carried out as law of the State.

Thus made and deliberated in open sitting
in Ouagadougou on May 13, 2008.

For the Speaker of the National Assembly,
the Second deputy Speaker

Maria Goretti B. DICKO/AGALEOUE ADOUA

The Secretary of the meeting

Sidiki BELEM