A COMPARATIVE ANALYSIS OF ILO CONVENTION NO. 94 AND THE PROCUREMENT LAW OF ARGENTINA, BRAZIL, COLOMBIA, MEXICO AND URUGUAY

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Objective of the Study

The ILO Labour Clauses (Public Contracts) Convention of 29 June 1949 (hereafter Convention No. 94) requires a state that buys works, goods or services to write protection for the contractor's workers into the contract. We examine which of these requirements appear in the procurement law of five Latin American countries, Argentina, Brazil, Colombia, Mexico and Uruguay, and whether there are records showing how these rules were applied in 2008–2025.

A *public contract* is an agreement between a public authority and a contractor who performs the work with its own employees (Convention No. 94, Art. 1); the state's employment contracts with its own staff and contracts with individuals fall outside it (ILO, 2008, para. 42).

A *labour clause* is a term of such a contract under which the contractor pays its workers no less than the prevailing rate for the same work in the same industry and region, and gives them hours of work and other conditions that are no less favourable. "Prevailing" means set by a collective agreement, an arbitration award or national law (Convention No. 94, Art. 2). This is the Convention's central requirement, which we refer to below as the *prevailing-conditions requirement*. The other requirements exist to make it work: the clause appears in every type of contract and extends to subcontractors, workers are protected against workplace hazards and informed of their rights, and the state keeps records, carries out inspections, penalises violators and withholds payments to the contractor so that workers receive what they are owed (Table 1).

The prevailing rate in an industry is usually set in a sector-wide (industry-level) collective agreement. This is not an employment contract with an individual worker but an agreement between trade unions and employers' organisations covering an entire industry, such as construction or cleaning, that fixes minimum pay and working conditions for all its workers. In Uruguay these rates are set by wage councils, in which the state, trade unions and employers are represented.

A law or contract can approach the central requirement in two ways. Under a *direct reference*, the law or contract points to a sector-wide collective agreement or to wage council rates, at least for some conditions or some contracts. Under a *general formula*, the contractor undertakes to "comply with labour legislation". On its own the formula does not meet the requirement, but where the law makes sector-wide agreements binding on all employers in the industry, the formula obliges the contractor to pay according to the agreement, and the result for wages is the same.

Only Uruguay and Brazil have ratified the Convention (NORMLEX), so we treat it as a benchmark rather than as a binding obligation for all five countries.

The tasks of the study:

1. To establish which requirements of the Convention appear in procurement laws and standard procurement documents (model contracts and standard bidding conditions) at the national level, and in federations at the federal level, in the versions in force in 2025–2026.
2. To collect records of application for 2008–2025: comments on Uruguay and Brazil by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), the body that monitors how countries apply the conventions they have ratified, and decisions of high courts and audit bodies in all five countries.

3. To test hypotheses on the link between ratification and countries' own mechanisms for protecting contractors' workers.
4. To examine the arguments against our conclusions.

Intended Readership

Researchers in labour law and public procurement law will find a comparison of five countries on a single framework: which elements of a Convention that the Committee of Experts placed "half way between labour law and procurement law" (ILO, 2008, para. 43) appear in their procurement law. The same framework can be applied to any other country.

Procurement specialists and trade union analysts will find the rules and standard documents through which the state checks how contractors meet their obligations to workers, and will see where these checks exist only on paper and where audit bodies have examined them.

The Executive Summary, Introduction, Discussion and Conclusions require no specialist knowledge; the country sections assume a basic grasp of procurement law.

Executive Summary

Procurement accounts for almost a third of government spending in OECD countries, about a quarter in Brazil and about a fifth in Colombia (OECD, 2025), and the work under these contracts is done by contractors' employees. ILO Convention No. 94 of 1949 requires the contract to stipulate that the contractor pays these workers no less, and gives them conditions no worse, than is customary for the same work in the same industry and region, and that the state checks compliance, penalises violators and, where necessary, withholds payments from the contractor. Of the five countries studied, Uruguay ratified the Convention in 1954 and Brazil in 1965, while Mexico told the ILO that general labour legislation protects workers' rights sufficiently. Yet in the procurement law of these countries the requirement to pay contractors' workers at the sector level is either absent or narrowed. We set out to learn which parts of the Convention appear in these countries' procurement law, whether records show how those rules are applied, and whether the pattern reflects ratification or the ways in which countries themselves protect contractors' workers.

Data and method. We read the Convention and ILO Recommendation No. 84 adopted alongside it, the General Survey that the Committee of Experts devoted to the Convention in 2008, all of the Committee's comments on Uruguay and Brazil for 2008–2025, the procurement laws, regulations and standard documents in force in the five countries, decisions of the high courts and the available audit reports. We analysed whether each requirement of the Convention appears, in full or in part, in national legislation, in standard documents and in records of application.

Principal findings. The countries that have not ratified the Convention, Argentina, Colombia and Mexico, do not require contractors to pay workers at least the prevailing rate for the same work in the industry: at most they impose a general duty to comply with labour legislation and check that social security contributions have been paid. Only Uruguay and Brazil have such a requirement, and even they apply it only to some contracts. All five countries have at least partial checks on payments to workers and sanctions, but in Colombia and Mexico the checks cover only contributions and taxes. Records of

application exist in only 9 of 35 cases (seven requirements in each of five countries): a court, an audit body or the ILO Committee has spoken on roughly one requirement in four.

In Uruguay the sector level is mandatory in service contracts, where a 2005 decree covers all working conditions and a 2007 law covers only wage council rates, and in construction, where the rates are named in a standard document.

In Brazil the requirement is absent from the procurement law but appears in decrees, instructions and standard documents, and applies only to federal service contracts in which the contractor's workers are assigned full-time to a single contract. Bids with wages below the collective agreement are rejected, and the contracting authority later checks that the contractor pays according to it.

In construction contracts Argentina requires contractors to "comply with labour legislation" and suspends payment in case of breach, and since sector-wide agreements there bind all employers, the result for wages is what the Convention requires. Procurement of goods and services lacks even this.

Colombia checks that contractors hold certificates of paid social security contributions, and on wages says only that they must be paid "in the amounts established by law".

Mexico's laws say nothing about the working conditions of contractors' employees, and the standard contract of the Mexican Social Security Institute releases the contracting authority from liability towards them.

The ILO Committee of Experts argued with the ratifying countries about which conditions and which contracts the clause covers, while the courts of Brazil and Argentina ruled only on whether the contracting authority must pay workers when the contractor has failed to do so.

Conclusions. Checks and sanctions exist in all five countries, whether or not they have ratified the Convention. The requirement to pay contractors' workers no less than the industry norm, however, is set out only in the two countries that ratified the Convention. Where the requirement exists, it covers only wage rates or a single type of contract, or applies only when the contractor is selected: bids with wages below the sector level are rejected, but the contract itself does not oblige the contractor to pay workers at that level. In the countries without ratification even the general formula "comply with labour legislation" is not universal, and Mexico lacks it altogether. The formula obliges contractors to pay according to a sector-wide agreement only when that agreement is legally binding on everyone, and this is the case only in Argentine construction. Checks that wages have been paid exist alongside the requirement to pay at the sector level, and the two complement each other. For a contractor's worker in Argentina outside construction, in Colombia and in Mexico, this means that the state at best checks whether contributions have been paid for them and whether their wages have been paid, but not how much they are paid. Our data cannot tell which matters more, ratification or the strength of collective agreements, because in the countries studied the two almost always go together.

Main limitations. Records of application are scarce, so our data say less about whether workers actually receive what they are owed than about what the law promises them. It is also unclear whether Uruguay's 1982 decree is formally still in force.

1. Introduction

1.1. Convention No. 94 as a Foundation for Worker Protection

OECD countries spend on average about 13% of GDP on procurement, which amounts to almost a third of all government expenditure; in Brazil the figure is about 15% of GDP and a quarter of spending, in Colombia about 11% and a fifth, and in Mexico about 5% and a sixth (OECD, 2025). As we have written before, procurement is one of the largest parts of the economy of a modern state (Limarau, “The Unprotected Reporter”, 2026). This money goes to contractors, and the work is done by their employees. The labour clause exists so that a contractor cannot win a tender by saving on their wages.

By ratifying the Convention, a state promises that a contractor who receives this money will pay its workers no less than the prevailing rate for the same work in the industry. Uruguay and Brazil made this promise more than half a century ago, yet in their procurement law the requirement applies only to some contracts. In Argentina, Colombia and Mexico it is absent, and only in Argentine construction does a general duty to comply with labour legislation produce the same result for wages.

The Committee of Experts described the Convention as situated “half way between labour law and procurement law” (ILO, 2008, para. 43). Its core is a term of the contract itself: the contractor undertakes to give its workers the most favourable conditions established for the same work in the district, and specific sanctions apply if this term is breached (ILO, 2008, para. 44). The Convention was adopted in 1949 and entered into force in 1952 (NORMLEX), and Recommendation No. 84, adopted at the same time, specifies what these conditions include: rates of ordinary and overtime pay, hours of work, holidays and sick leave. Table 1 sets out all the requirements we examined.

Table 1. Requirements of Convention No. 94 and criteria for partial fulfilment

Requirement	Article	Partial if
Clause in all contracts and for subcontractors	1	only some contracts
Prevailing conditions	2	not all conditions or contracts
Health and safety	3	yes or no only
Notices to workers	4	yes or no only
Wage payment checks	4	contributions or taxes only
Sanctions for breach	5	exclusion, general or contributions
Withholding payments for workers	5	paid to funds

By prevailing conditions the Convention means pay, hours of work and other conditions no less favourable than those set by a collective agreement, an arbitration award or national law for the same work in the industry and region, and bidders must know this in advance. We also counted as partial a requirement that applies only when the contractor is selected, exclusion from tendering that is unconnected with the clause, and subcontractors who are protected only by general law.

The 2008 General Survey is the first and, to our knowledge, the only comprehensive review of how the Convention is applied (ILO, 2008, para. 303). Since 1956 the Committee has repeated that labour legislation applies to everyone, but that this does not release states from the obligation to include the clause in the contract (ILO, 2008, para. 45). A formula stating that “the contractor complies with national legislation” is not enough, and where the law does not set minimum standards on every matter, repeating

this formula in the contract as the basis of worker protection is "wholly illusory" (ILO, 2008, paras. 110–111).

Sixty-three countries have ratified the Convention, and the United Kingdom denounced it, that is, withdrew from it, in 1982 (NORMLEX). In 2008 the Convention had 60 ratifications, only three of them from the preceding ten years (ILO, 2008, paras. 282–283). The Committee observed that few ratifying countries apply it fully, and that most consider general labour law sufficient. In its assessment the Convention makes sense where collective agreements give workers more than the law, whereas where unions and employers bargain weakly, none of the parties has an incentive to pursue labour clauses (ILO, 2008, para. 281). The Committee considered that the Convention should be promoted, but also that it "does not adequately reflect current procurement patterns" (ILO, 2008, para. 313).

1.2. Rationale for the Choice of Region

Latin America offers an opportunity that is rare in comparative research: one region contains both countries that have ratified the Convention and countries that have not. Uruguay approved the Convention by a 1953 law together with 27 other conventions, and its ratification was registered in 1954 (NORMLEX). Brazil ratified the Convention in 1965, announced its denunciation in 1973 and in 1974 declared that denunciation void with retroactive effect (Decreto 74.688); according to the ILO, the Convention remains in force for Brazil. Argentina, Colombia and Mexico have not ratified the Convention, and comparing the two groups shows what ratification itself changes in procurement law.

These countries also differ sharply in collective bargaining coverage. In Uruguay a collective agreement covers almost every employee (about 95%), in Brazil about two in three (about 65%), in Argentina one in two (about 49%), in Colombia about one in six (about 16%) and in Mexico one in ten (about 10%) (ILO, ILOSTAT). The same countries therefore allow us to test whether strong sector-wide agreements can take the place of a labour clause in contracts.

We expected that countries without ratification would protect contractors' workers in other ways: the contracting authority would answer to workers for the contractor's debts, and bidders would be admitted only with a certificate of paid social security contributions. Comparison with the Convention would then reveal an imbalance, with checks and sanctions in place but no prevailing-conditions requirement.

1.3. Literature Review

Most of the literature on Convention No. 94 concerns Europe. Its main themes are how labour clauses in procurement can coexist with European Union law after the Rüffert judgment of the Court of Justice (Bruun, Jacobs, Schmidt, 2010; Sanchez Graells, 2018), and how working conditions in public contracts are set and extended in practice (Barnard, 2016; Refslund et al., 2020; Arnholtz et al., 2025).

In Latin America the Convention is discussed mainly by Brazilian authors, who ask whether the state is liable to workers for a contractor's debts and whether the procurement law is compatible with the Convention (Zwicker, 2014; Araújo Neto, 2020, 2023, 2024). The labour clause itself is the subject of a monograph by Alves (2014), who concludes that the Convention "in most cases does not achieve its aims". The procurement literature on other countries in the region treats working conditions as part of sustainable procurement and human rights, which is the approach Treviño Lozano (2022) takes for Chile, Colombia and Peru.

For our study the most important works are the ILO's 2008 General Survey, the main systematic review of how the Convention is applied, Araújo Neto's work on Brazilian practice and the monograph by Alves. We add a comparison of Latin American countries on a single framework and a test of what their procurement law protects: the fact that wages are paid, or the level at which they are paid.

1.4. Research Question and Hypotheses

Our question is which requirements of Convention No. 94 appear in the procurement law and standard documents of Argentina, Brazil, Colombia, Mexico and Uruguay, which of them are documented in records of application for 2008–2025, and whether the pattern is explained by ratification or by countries' own mechanisms for protecting contractors' workers. We answer the first part descriptively; to the second we can answer only "consistent" or "not consistent".

The hypotheses below are given in the form they took after a first reading of the sources.

(a) *Ratification.* All five countries have at least partial checks and sanctions, whether or not they have ratified the Convention, but the requirement to pay workers no less than the industry norm is set out only in Uruguay and Brazil. Argentina has not ratified the Convention but obtains the same result for wages through the general formula.

(b) *Payment of wages.* No country has adopted the prevailing-conditions requirement in full, and where it exists it covers only wage rates or a single type of contract, or applies only when the contractor is selected. Checks on payments and contributions, by contrast, exist everywhere, and some countries also have the general formula "comply with labour legislation". The procurement law of these countries protects the fact that wages are paid rather than the level of conditions.

(c) *Sector-wide agreements.* The general formula produces the same result as the Convention if the sector-wide collective agreement is automatically binding on all employers in the industry and if the formula does not reduce pay to the statutory minimum.

There was also a fourth hypothesis, that the ILO Committee of Experts and the courts of the ratifying countries discuss non-payment rather than the level of conditions, but the first ILO documents refuted it and we dropped it.

2. Data and Method

2.1. Comparison Method

We looked for each requirement in Table 1 in the following types of document. The first is procurement laws and regulations and the labour laws connected with them; where a rule appears only in secondary legislation, we say so. The second is standard procurement documents, meaning mandatory standard conditions, model contracts and procurement agency instructions; documents of individual contracting authorities are cited only as examples. The third is records of application: comments of the ILO Committee of Experts, decisions of high courts and audit reports. Documents of contracting authorities do not count here, because they show that a term was written into a contract but not that it was enforced. If a rule appears in law, we did not assume that it also appears in standard documents, and vice versa.

We took our main rule from the Committee: the formula “comply with labour legislation” alone does not meet the prevailing-conditions requirement (ILO, 2008, paras. 110–111). A reference to the law suffices only where the law fixes conditions rigidly, as both floor and ceiling (ILO, 2008, para. 112). Otherwise it falls short, because collective agreements give more than the law or do not bind everyone (ILO, 2008, p. 17, n. 5). We therefore equated the general formula with a wage requirement only where the sector-wide agreement is automatically binding on all employers in the industry, and only for the contracts in which the formula is written. A direct reference to a sector-wide agreement or to a wage council decision counted in every case.

Our treatment of Brazil, where a bid is rejected if its wages are below the collective agreement, is open to dispute. We regard this as partial fulfilment of the prevailing-conditions requirement and refer to it below as the *price check*. It filters out unrealistically cheap bids at the tender stage, but the obligation to pay at the sector level does not enter the contract, and the worker cannot rely on it. We assessed a similar rule in a 2024 decree (Decreto 12.174) in the same way. Our treatment of Uruguay is also open to dispute: we assessed it by what the law in force requires procurement documents to include and by what the Committee regards as in force, rather than by the formal status of older decrees that were never repealed.

2.2. Scope and Sources

We studied contracts between the state and organisations that employ workers, not contracts with individuals, including Colombia’s contracts for services with natural persons (CCE, 2025). General labour law rules on subcontracting, such as Mexico’s register of specialised service providers and Brazil’s Lei 6.019, also fall outside the comparison. We studied only national rules, and in federations only federal rules: the Convention leaves each state to decide whether to extend it to local authorities (Art. 1). Laws were read in their 2025–2026 versions, and records of application cover 2008–2025.

ILO texts come from the ILO’s NORMLEX database, laws from the countries’ official registers, standard documents from procurement agency websites and court decisions from court websites; quotations from Spanish and Portuguese are in our own translation.

2.3. Limitations of the Method

The sector-wide agreement hypothesis can be tested only where the general formula exists. Silence on the part of the ILO Committee means only that there are no data, and this is the case for Brazil after 2017, when the Committee stopped addressing comments to it.

3. The ILO Position

Argentina, Colombia and Mexico gave the ILO different answers on whether they would ratify the Convention.

Table 2. Ratification of Convention No. 94 and country replies to the ILO

	Uruguay	Brazil	Argentina	Colombia	Mexico
Year of ratification	1954	1965	no	no	no
Reply on ratification	already ratified	already ratified	no answer	not planned	clauses unnecessary

Argentina submitted a report but said nothing about ratification, although the country’s main trade union confederation supports it (ILO, 2008, paras. 294, 297). Colombia replied that ratification was not

envisaged and gave no reasons (ILO, 2008, para. 289). Mexico replied that workers' rights were "sufficiently and uniformly protected by the general labour legislation" (ILO, 2008, para. 292), an argument the Committee has rejected since 1956 (ILO, 2008, para. 45).

In the same survey the Committee noted that in Uruguay, after the acts of 2005 and 2007, it remained unclear what the clauses cover (ILO, 2008, para. 114), and that Brazil had "still to adopt specific implementing measures" (ILO, 2008, para. 109). It urged Brazil to apply the requirements on inspection and sanctions (ILO, 2008, para. 169) and noted its rule tying the contract price to market wages and collective agreements (ILO, 2008, para. 195). In the Committee's assessment, Argentina's public works law merely subjects the contractor to labour legislation, but suspends payments when wages are in arrears (ILO, 2008, paras. 121, 165), while Mexico has no specific provisions on labour clauses (ILO, 2008, para. 121).

Between 2008 and 2025 the Committee addressed four observations to Uruguay (2008, 2012, 2018, 2022), and four observations (2008–2012) and three direct requests (2013–2017) to Brazil; it has not written to Brazil since 2017 (NORMLEX). To Uruguay the Committee wrote that the clause covers only wage rates and only services. To Brazil it wrote that the clause concerns only the level of wages and must appear in the contract itself, not only in the tender documents.

4. Country Analysis

This section analyses each jurisdiction in turn. Summary tables follow in the next section.

4.1. Uruguay. Restricted Application

Uruguay is the only one of the five countries in which the duty to include a labour clause is written into law, and the only one whose procurement acts refer to the Convention, but between 1982 and 2015 the clause came to cover fewer conditions and fewer contracts.

Law. A 1982 decree (Decreto 114/982) required clauses in all types of contract: the contractor complied with wage council decisions and collective agreements on pay, job grades, overtime and allowances, observed health and safety rules and allowed inspections, which fully matched the Convention's requirement. No later than 2000, and again in 2002–2003, the Committee pointed out that a 1990 decree had narrowed this requirement to compliance with the "provisions in force" (ILO, 2008, para. 114). A 2005 decree (Decreto 475/005) restored the clauses, but only for services: the contractor guarantees pay, hours and conditions "under the laws, wage council decisions and/or collective agreements" and observes health and safety rules; it is paid only after presenting proof of wage payments, and payments are withheld if wages are in arrears. A 2007 law (Ley 18.098) enshrined this duty in a narrower form: in service contracts the contractor need only "respect wage council decisions". Non-payment leads to termination of the contract, the contractor is paid after presenting proof of wage payments, and debts to workers are withheld from payments. Laws of 2007 and 2008 made the state jointly and severally liable for subcontractors and gave it the right to demand documents, withhold payments and pay workers directly (Ley 18.099; Ley 18.251). The consolidated code on public finance and procurement (TOCAF) contains no labour clauses.

Uruguay is difficult to assess. The 2005 decree is in force and provides a full clause for services, and in 2008 the Committee found it consistent with the Convention for services (CEACR, Uruguay, 2008). The 2007 law requires less than the decree but has not formally repealed it. The 1982 decree has

not been repealed according to the official register, but it is absent from the standard documents, the Committee has long regarded it as narrowed, and in 2018–2022 the government relied on other instruments (CEACR, Uruguay, 2022). Judged by formal status, Uruguay would meet the requirement in full for all contracts and the payment hypothesis would not apply to it, but we judge by what actually operates. By that measure the requirement is met in part, and only for services: the decree covers all conditions and the law only wage rates, which is what the Committee addresses when it asks for the clause to cover more conditions and more contracts.

Standard documents. The mandatory standard conditions of 2014 for the procurement of goods and services (Decreto 131/014) contain no labour provisions at all. The standard conditions of 2015 for construction works (Decreto 257/015, cl. 38) require compliance with labour legislation, including wage council rates under the 2007 law, and give the contracting authority the right to demand documents, withhold payments and terminate the contract for breach, so that here the general formula and a direct reference to rates stand side by side. The conditions of one procurement by the public education authority, for example, repeat the clauses of the 2007 law (ANEP, 2022).

Application. In 2008 the Committee noted that the clause was limited to wage rates and services, and in 2012–2022 it repeatedly asked for the clauses to be extended to all types of contract and for hours of work, holidays and sick leave to be added to the rates in the 2007 law (CEACR, Uruguay, 2008–2022). In 2022 the Committee observed that the standard conditions for construction name only wage rates among collectively agreed standards, while the government itself acknowledged that the conditions for goods and services contain no clauses, and the Committee offered technical assistance (CEACR, Uruguay, 2022).

4.2. Brazil. A Requirement in Secondary Legislation

In Brazil the obligation under the Convention has applied without interruption since 1966. The procurement law contains no prevailing-conditions requirement, but a requirement to pay “no less than the collective agreement” is written into a decree, an instruction and the standard terms of reference, and it operates twice: when the contractor is selected (the price check) and while the contract is performed (payment checks).

Law. The 2021 procurement law (Lei 14.133) covers goods, services and works, but not state-owned enterprises, and allows subcontracting with the administration’s permission. Its list of mandatory contract terms contains no prevailing-conditions requirement: the law merely forbids the contracting authority to set wages below the legal level and requires it to check documents, while labour obligations rest with the contractor. In continuous services in which the contractor’s workers are assigned full-time to one contract (hereafter *dedicated-staff services*), the administration is liable to workers after the contractor, but only “where a failure of supervision is proven”. It may take a guarantee, pay the contractor after the workers have been paid, hold money in a blocked account for future payments or pay workers directly, but it is not obliged to do any of these (Lei 14.133, Art. 121). The sanctions in the law are general, with no specific rules on pay.

Secondary legislation is stricter. A 2018 decree (Decreto 9.507) requires that in federal service contracts the contractor be paid only after payments to workers have been confirmed, that the contract be terminated for non-payment, that a blocked account or payment for actual performance be used, and that a guarantee be taken. A 2024 decree (Decreto 12.174) requires clauses on health and safety and on joint and several liability for subcontractors, and in dedicated-staff services admits only bids in which pay and meal

allowances are no lower than the estimate based on the collective agreement for that category of workers and territory. The same decree allows the working week to be cut to 40 hours without loss of pay. This is a direct reference to the sector level, but in a decree rather than a law, only at the selection stage and only for one type of service.

Standard documents. A 2017 instruction of the Federal Government's Management Secretariat (IN SEGES 5/2017) requires cost estimates to budget for wages no lower than those set by the collective agreement, a normative ruling of the labour court or the law, and forbids the contracting authority to set the wages of the contractor's workers itself (except in the cases provided for in the 2024 decree). During performance the authority checks that wages are no lower than those in the contract and the collective agreement, and may terminate the contract. The standard terms of reference of the Office of the Attorney General of the Union (Advocacia-Geral da União), the body that issues standard procurement documents, accept only bids with wages, allowances and benefits no lower than in the estimate based on the collective agreement chosen as the benchmark (the "reference" agreement): "the rights more favourable to the worker must prevail" (AGU, 2026). The standard contract does not contain this term, which appears only in the terms of reference (AGU, 2025). The requirement is therefore met in part: only in federal dedicated-staff services, only as a price check and a payment check rather than as a contract term, and with the administration deciding which agreement serves as the benchmark. The Committee considered this approach insufficient.

Application. In 2007 the government considered clauses unnecessary given general labour law, while the Committee replied that for the previous 12 years it had been pointing out that the 1993 law and the 1994 instruction gave only partial effect to the Convention, "as regards the level of wages" (CEACR, Brazil, 2007). In 2015–2017 it wrote that the clause must appear in the signed contract, not only in the tender documents (CEACR, Brazil, 2017). National courts address only who pays when the contractor fails to, and they limit the liability of the contracting authority. The Superior Labour Court (Súmula 331 as amended in 2011) and the Federal Supreme Court (decisions of 2010, 2017 and 2025: ADC 16, Tema 246, Tema 1118) require proof that the authority supervised the contractor poorly. Under the 2025 decision, the authority is at fault if it was formally notified and did nothing. In 2013 the Federal Court of Accounts found that contractors systematically fail to pay their workers (Acórdão TCU 1214/2013). These decisions are linked to the Convention by researchers and by a study group of regional labour court judges (Araújo Neto, 2024; TRT4, 2025), but the courts themselves do not cite it, so we treat the authority's liability as a national mechanism rather than as an application of the Convention.

4.3. Argentina. Limited Application

In Argentina the general rules for the procurement of goods and services do not contain even the formula "comply with labour legislation".

Collective agreements in Argentina are nonetheless strong. In 2018 they covered 49% of employees, one in two, more than in Colombia (16%) and Mexico (10%) (ILO, ILOSTAT), and by law they bind all employers in the industry. Procurement law, however, does not mention collective agreements.

Law. The 2001 decree on procurement by the national administration (Decreto Delegado 1023/2001) merely bars from tendering those in arrears on social security contributions and employers entered in a special register for labour violations, and a 2016 regulation adds a check on debts through the tax authority. The 1947 public works law (Ley 13.064) is stricter: it obliges the contractor to comply with

labour legislation and pay its staff on time, and for any breach it suspends payment for completed work "in all cases". Money owed to the contractor cannot be attached, except for claims by the workers and suppliers of the project itself. The 1980 construction workers' law prohibits pay below the collective agreement, and collective agreements approved by the state are binding on all workers in the industry (Ley 22.250; Ley 14.250). In construction, therefore, the formula "comply with legislation" guarantees sector-level pay, as the Convention requires. The employment contract law (Ley 20.744, Art. 30) obliges anyone who contracts out work or services forming part of its normal activity to require proof that contributions and wages have been paid, and whoever has checked this "is released from all liability".

Standard documents. The standard bidding conditions of 2016 likewise bar debtors and add only a 4% quota of workers with disabilities when services are contracted out (Disposición ONC 63-E/2016). The conditions of 2024 introduce social security and health and safety criteria, but a bid that fails to meet them is not rejected unless the conditions of the specific procurement say otherwise (Disposición ONC 62/2024). The conditions of one procurement by the national science council required monthly proof that wages and contributions had been paid (CONICET UAI, 2024).

Application. In 2013, in cases involving the City of Buenos Aires, the Supreme Court held that the state is not an employer under the employment contract law and is not jointly liable with the contractor under its Article 30. The national labour appeals chambers ruled the same way in cases against federal contracting authorities: in 2014 on a worker's claim against a military hospital, and in 2005 (under the Supreme Court's earlier position) in a case against the Ministry of Foreign Affairs over a cleaning contract (Microjuris, 2014; Diario Judicial, n.d.). The government's internal control body examined 2,985 contracts from 2023 for cleaning 15,101 buildings of 144 public bodies, and the internal audit unit of the national science council examined that council's contractors. Both reviews found that contributions, insurance and the attendance of workers are not checked, or that the checks are not documented (Diario Panorama, 2024; CONICET UAI, 2024). In 2020 a bill to ratify the Convention was introduced in the Chamber of Deputies (HCDN, 2020).

4.4. Colombia. Control through Contribution Payments

Law. In Colombia a 2002 law (Ley 789, Art. 50) obliges every contractor to pay contributions to the social security systems and earmarked funds. When bidding, an organisation proves payment with a certificate, and when the contract is closed any arrears are withheld and transferred to these systems. A 2007 law (Ley 1150) requires such proof before every payment. A 2003 law made payment of contributions a term of the contract, with fines and possible unilateral termination for non-payment, but the 2007 law repealed this rule with effect from 16 January 2008. The Committee described the Colombian arrangement while that rule was still in force and called such mechanisms "a poor second best" compared with the labour clause (ILO, 2008, paras. 170–171). The money withheld goes to the funds, not to the workers, and the laws say nothing about wages or collective agreements.

Standard documents. The standard documents of the national procurement agency Colombia Compra Eficiente for transport infrastructure works (Documentos Tipo v4, in force since 3 February 2025) require contributions to be checked at every stage and health and safety rules to be observed, but on wages they say only that these must be paid "in the amounts established by law", that is, at the statutory minimum. In Colombia sector-wide agreements become binding on the whole industry only by government decision (Código Sustantivo del Trabajo, Art. 472), and only about one employee in six is covered by a collective agreement (ILO, ILOSTAT), so, unlike in Argentine construction, the formula

does not guarantee sector-level pay. The documents do, however, make sure that wages are paid: where payment is made in stages (one of the available options), the contractor receives the final payment only after settling in full with its workers. The contractor must provide a guarantee of payment of wages and benefits for the term of the contract and three further years, but the money under it goes to the contracting authority. Late payment of wages may be fined, subcontracting is allowed with the authority's permission, and the contract excludes any employment relationship between the authority and the contractor's workers.

Application. In 2011 the Council of State, Colombia's highest administrative court, held that the 2002 rule is aimed at combating the evasion of contributions (CCE, 2022).

4.5. Mexico. Absence of a Labour Clause

Mexico told the ILO in 2008 that general labour legislation was sufficient, and its 2025 laws in effect restate this position. The new law on the procurement of goods, leases and services (LAASSP, April 2025) says nothing about the working conditions of contractors' employees and requires only certificates of no tax debts at the award stage and during the contract, and debtors are barred from tendering. Its implementing regulation (December 2025) adds a check on contributions to the Mexican Social Security Institute and, for labour-intensive services, a price adjustment that follows the minimum wage. The public works law (LOPSRM) is also silent on working conditions and offers only an advantage in tendering for hiring workers with disabilities. Contractors' workers are protected by general labour law: providers of specialised services are entered in a register, and whoever uses their work is jointly liable with them (Ley Federal del Trabajo, Arts. 13–15).

Standard documents. We assessed Mexico on the basis of two invitations to tender issued by the Mexican Social Security Institute. They require certificates from the tax authority, the social security institute and the workers' housing fund at bid opening and at contract signature, but say nothing about the level of pay. The standard contract makes the contractor the sole employer and excludes the contracting authority from any role as "substitute employer, joint employer, beneficiary or intermediary" (IMSS, 2025a). This is the only document we examined in which the authority's liability to the contractor's workers is excluded by contract, with no protection of payments offered in its place.

Application. The Supreme Court has ruled only on the register of specialised service providers (El Contribuyente, 2024).

5. Overall Picture and Hypothesis Testing

5.1. Laws and Standard Documents

Table 3. Requirements of Convention No. 94 in procurement laws

	Uruguay	Brazil	Argentina	Colombia	Mexico
All contracts and subcontractors	services only	yes	construction only	no subcontractors	subcontracting up to 49%
Prevailing conditions	services only	price check in decree	construction only	no	no
Health and safety	through general law	yes, in decree	no	no	no
Notices to workers	no	no	no	no	no

	Uruguay	Brazil	Argentina	Colombia	Mexico
Wage payment checks	yes	yes	contributions only	contributions only	taxes and contributions only
Sanctions for breach	yes	general only	construction and exclusion	contributions only	exclusion only
Withholding and payment guarantees	yes	yes, at authority's discretion	construction only	paid to funds	no

Table 4. Requirements of Convention No. 94 in standard procurement documents

	Uruguay	Brazil	Argentina	Colombia	Mexico
All contracts and subcontractors	construction only	yes	subcontracting with consent	subcontracting without labour terms	subcontractor certificates
Prevailing conditions	rates in construction	price and payment checks	no	no	no
Health and safety	construction only	yes	optional	yes	no
Notices to workers	no	no	no	no	no
Wage payment checks	construction only	yes	contributions only	contributions and wage settlement	taxes and contributions only
Sanctions for breach	construction only	yes	exclusion only	optional fine	exclusion only
Withholding and payment guarantees	construction only	yes	no	guarantee to authority	no

Both tables describe national rules in their 2025–2026 versions. The Brazilian standard documents are written for dedicated-staff services and the Colombian ones for transport infrastructure works, while for Mexico we examined invitations to tender issued by the Mexican Social Security Institute in place of standard documents.

5.2. Application in Practice

Table 5. Records of application, 2008–2025

	Uruguay	Brazil	Argentina	Colombia	Mexico
ILO Committee of Experts	2008–2022	2007–2017	not ratified	not ratified	not ratified
Courts	not found	2010–2025	2005–2014	2011	not found
Audit and internal control	not found	2013	2024	not found	not found

The 2025 Brazilian decision also describes health and safety as part of the contracting authority's duty of prevention.

Records of application were found in 9 of 35 cases (seven requirements in each of five countries), five of them for Brazil, so a court, an audit body or the ILO Committee has spoken on roughly one requirement in four. "Not found" means only that no such document is available in open sources.

5.3. Results of Hypothesis Testing

All five countries have at least partial checks and sanctions, but in Colombia and Mexico these concern only contributions and taxes. In the Colombian standard contract the contractor guarantees that wages will be paid and, under one of the payment options, receives the final payment only after settling with its workers. None of the procurement documents examined requires notices to be posted for workers, although the Committee asked this of Brazil (CEACR, Brazil, 2007).

The ratification hypothesis. It was first framed as "whether the requirements exist does not depend on ratification", and it would have been refuted if the ratifying countries had all the requirements and the others none. That is not the case: Argentina, Colombia and Mexico have at least partial checks and sanctions, and two of them also withhold payments. The expectation for Brazil was confirmed as well: the law contains no prevailing-conditions requirement, which appears only in the 2024 decree, and then as a price check in dedicated-staff services. A direct reference to the sector level, however, exists only in the ratifying countries, while Argentina reaches the same result for wages by another route. The hypothesis had to be weakened and rewritten, and in its new form it is confirmed.

The payment hypothesis. It would have been refuted if at least three countries, including some that have not ratified the Convention, required the prevailing-conditions requirement to be written into the contract, whereas such a requirement exists only in Uruguay and Brazil. The hypothesis is confirmed with a qualification: where the requirement exists, it does not cover all conditions or all contracts, or it is not written into the contract itself. The original wording, "the requirement is absent or weakened", did not fit, because Uruguay's 2005 decree provides a full clause for services. Uruguay's unrepealed 1982 decree and the Brazilian decrees, instructions and standard documents weaken the hypothesis without refuting it, since they protect the level of pay set by the collective agreement and not only the fact of payment. Argentina's public works law strictly protects the fact of payment, the Colombian guarantee likewise protects only that, and both cases confirm the hypothesis.

The sector-wide agreement hypothesis. It was first framed as "the general formula produces the Convention's result in Argentina, Brazil and Uruguay and does not in Colombia and Mexico", but it can be tested only where the general formula exists and stands without a direct reference. In Uruguay a direct reference to wage council rates stands next to the formula, and it is impossible to say which of the two is at work. In Brazil it is a decree that requires a sector-wide agreement to serve as the benchmark, which is also a direct reference, and Mexico has no formula. That leaves Argentina and Colombia. In Argentine construction the formula refers to the law, the construction workers' law refers to the collective agreement, and the agreement binds everyone. In Colombia the formula exists but does not guarantee sector-level pay, and sector-wide agreements bind everyone only by government decision. Both cases are consistent with the hypothesis, but the Colombian formula refers to the statutory minimum, and this explains the result just as well as the fact that agreements there do not bind everyone does. The hypothesis had to be weakened more than we expected: it is consistent with one case, does not contradict the others, and now states only the condition under which the general formula can substitute for a clause, without explaining why a clause exists.

6. Discussion

6.1. Ratification and the Prevailing-Conditions Requirement

Ratification coincides with the main difference between the countries: the requirement to pay contractors' workers no less than the industry norm is set out only in Uruguay and Brazil, although checks and sanctions exist in all five countries. Argentina, Colombia and Mexico have no such requirement, and only in Argentine construction does the 1947 law give workers the same result for wages. The link between ratification and this requirement can run in different directions: ratification may have produced such a rule, countries that already had the rule may have been more willing to ratify, and the strength of collective bargaining may lie behind both.

The ratifying countries do not apply the Convention in full, like most countries that have ratified it, as the Committee of Experts notes in the General Survey (ILO, 2008, paras. 281–283). We therefore turn to what stands in place of the prevailing-conditions requirement where it is absent.

6.2. Payment Controls and Pay Levels

Checks that wages have been paid do not replace the prevailing-conditions requirement but run alongside it: they exist in all five countries and are strongest in the same countries that have the requirement itself. In Colombia the contractor proves payment of contributions with certificates, and in Mexico with certificates from three agencies. In Uruguay the contracting authority checks proof of wage payments and withholds arrears, in Brazil it pays after payments to workers have been confirmed and holds money in a blocked account, and in Argentine construction it suspends payment in case of breach. In Uruguay and Brazil these checks are no weaker than elsewhere, and only the rules for Argentine construction are comparable with them. Protection is weakest in Mexico and in Argentina's general procurement rules, where there is no withholding, and in Mexico the standard contract also releases the contracting authority from liability towards the contractor's workers.

The need for such checks is evident from the documents themselves. The preamble of Uruguay's 2005 decree refers to wages below the minimum and evasion of contributions, the Brazilian Federal Court of Accounts in 2013 refers to systematic non-payment, and the Committee of Experts described the same picture as early as 2008 (ILO, 2008, para. 171). Legislation, meanwhile, moves slowly. Mexico's 2025 procurement law is silent on working conditions, and Brazil's 2021 law removed wages from the rule on manifestly unfeasible prices (Lei 14.133, Art. 59), so a price check based on wages returned only with the 2024 decree, this time tied to the collective agreement.

6.3. Binding Force of Sector-Wide Agreements

Table 6. Binding force of sector-wide collective agreements and its effect on the labour clause

	Uruguay	**Brazil**	**Argentina**	**Colombia**	**Mexico**
Agreement binds all employers in the industry	yes	within own category	yes, automatically	only by government decision	contrato-ley only
Effect on the labour clause	direct reference to rates	reference agreement in decree	sector pay in construction	none	no formula

The binding force of sector-wide agreements is organised differently in each of the five countries. In Uruguay an agreement concluded by the most representative organisations binds everyone once it is registered, and wage council decisions apply to the whole private sector (Ley 18.566, Art. 16). In Brazil an agreement applies within the category of workers and the territory of the unions that signed it (CLT, Art. 611), whereas in Argentina approved agreements automatically extend to all workers in the industry (Ley 14.250, Art. 4). In Colombia the government extends an agreement to the whole industry if it covers more than two thirds of the workers (Código Sustantivo del Trabajo, Art. 472), and in Mexico an industry-wide "contract-law" (contrato-ley) is concluded at the initiative of unions representing at least two thirds of the workers and becomes binding once officially declared (LFT, Arts. 404, 406).

The binding force of agreements does not by itself create a clause, and Argentina shows this most clearly. Agreements there automatically bind everyone, yet the general procurement rules contain no clause, and only in construction does the general formula "comply with labour legislation" deliver sector-

level pay. In Colombia agreements bind everyone only by government decision, and the formula does not produce that result, which does not contradict the hypothesis. In Brazil the sector level is required by decree and applied by the administration, so the binding force of agreements decides nothing here. Even where the formula produces the Convention's result, it covers wage rates but not hours of work or holidays (CEACR, Uruguay, 2022).

In our countries ratification and the binding force of sector-wide agreements almost always go together: Uruguay and Brazil have both, Colombia and Mexico have neither, and only Argentina separates them. The Committee of Experts linked full application of the Convention to the strength of collective bargaining (ILO, 2008, para. 281), but the link can also run the other way: in 1950 Sweden decided against ratifying the Convention mainly because collective agreements already covered most workers (ILO, 2008, para. 286).

6.4. ILO Supervision and Case Law

The ILO Committee of Experts and national courts look at the same problem from different sides. All of the Committee's observations to Uruguay concern which conditions and which contracts the clause covers (CEACR, Uruguay, 2008–2022). Of its seven comments to Brazil, four concern the clause, three concern whether the material submitted falls within the scope of the Convention, and none concerns non-payment. When a Brazilian confederation of liberal professions wrote to the Committee about liability for non-payment, the Committee brought the discussion back to the clause (CEACR, Brazil, 2017).

The courts of Brazil and Argentina, by contrast, decide only whether the contracting authority is liable when the contractor fails to pay its workers. This is the shape of the Brazilian decisions up to the Supreme Court's 2025 ruling and of the Argentine decisions under Article 30 of the employment contract law, which limit this liability and do not cite the Convention. The Committee speaks of the level of conditions but does not see how they are observed in practice, while the courts see non-payment but not the level of pay.

6.5. Counterarguments

The main argument against our conclusions is that laws and standard documents describe how things should be, not how they are. Records of practice answer it in part: Argentine internal control shows that contributions and the attendance of workers on site are not checked, or that the checks are not documented (CONICET UAI, 2024), but this is one country and one type of service.

The second argument concerns causes: in our countries ratification and the strength of collective agreements go together, and these data cannot separate their effects. We therefore frame the sector-wide agreement hypothesis as a condition under which the general formula can substitute for a clause, and not as an explanation of why there is no clause.

The third argument is that a strong labour inspectorate can take the place of the clause. The Convention does allow other mechanisms, but only for record-keeping and inspection, not for the prevailing-conditions requirement itself (ILO, 2008, para. 45).

6.6. Scope of the Conclusions

Our conclusions concern the procurement rules of five countries and what documents reveal about their application. They do not settle the question of ratification: the Committee of Experts considers

that the Convention should be promoted and may need to be revisited (ILO, 2008, para. 313), but that is a matter of policy, not of comparing rules.

7. Limitations

We studied only national rules, and the rules of states, provinces and municipalities may contain clauses that our result does not capture (Convention No. 94, Art. 1). The Brazilian procurement law does not apply to state-owned enterprises. Our contested assessments also affect the result. If Uruguay were assessed by the formal status of its decrees, the requirement would be fully met and the payment hypothesis would not apply to Uruguay, and we counted the Brazilian price check as partial fulfilment.

8. Conclusions

1. Comparison with Convention No. 94 reveals the same imbalance in every country: all have at least partial checks and sanctions, while the requirement to provide pay and conditions at the sector level, where it exists, is narrowed, covering not all conditions or not all contracts, or not written into the contract itself.
2. Checks and sanctions exist both in the countries that ratified the Convention and in those that did not, while the requirement to pay no less than the industry norm is set out only in Uruguay and Brazil. In Uruguay it covers services (all conditions under the 2005 decree, wage rates under the 2007 law) and construction (wage rates). In Brazil it covers only federal dedicated-staff services: bids with wages below the collective agreement are rejected (the decree and the standard terms of reference), and payments are checked during performance (the instruction). Argentina, Colombia and Mexico have no direct reference, but in Argentine construction the general formula produces the same result for wages.
3. In the countries without ratification even the general formula “comply with labour legislation” is not universal: in Argentina it applies only to construction works, in Colombia it refers to the statutory minimum, and in Mexico it appears nowhere. The standard contract of the Mexican Social Security Institute releases the contracting authority from liability towards the contractor’s workers.
4. The general formula secures sector-level pay where the sector-wide agreement binds everyone; this is consistent with Argentine construction and does not contradict Colombia, while the other countries do not test it. The binding force of agreements does not by itself create a clause. In our countries ratification and the strength of agreements almost always go together, and only Argentina separates them. The Committee linked full application of the Convention to the strength of collective bargaining (ILO, 2008, para. 281), while the Swedish example shows that strong agreements can also be a reason not to ratify it (ILO, 2008, para. 286).
5. Checks on the payment of wages exist in all countries, in Uruguay and Brazil they are no weaker than elsewhere, and the Colombian standard contract adds a wage payment guarantee. Payment checks therefore do not explain why the prevailing-conditions requirement is absent; they only show what stands in its place where it is absent.
6. The ILO Committee of Experts wrote to the ratifying countries about which conditions and contracts the clause covers, where it must appear and whether the material submitted falls within the Convention, but never about non-payment. The courts of Brazil and Argentina decided

only whether the contracting authority is liable when the contractor fails to pay, and they limit that liability. Apart from Uruguay's decrees of 1982 and 2005, no procurement act in force mentions the Convention.

7. In Argentina internal control documents show that the required checks are not carried out or not documented. Records of application exist in only 9 of 35 cases, and this scarcity is itself both a finding and a boundary of the study.

In our assessment, these findings point to the following steps.

1. The Government of Uruguay should include a labour clause in the mandatory standard conditions for the procurement of goods and services and add hours of work, holidays and sick leave to the 2007 law, as the ILO Committee of Experts has requested since 2012. It can draw on the technical assistance that the Committee offered in 2022.

2. The Office of the Attorney General of the Union in Brazil should, at the next revision of its standard documents, move the requirement to pay no less than the collective agreement from the terms of reference into the standard contract itself, so that workers can rely on it.

3. Argentina's national procurement office should extend to the standard conditions for goods and services what already applies in construction: the duty to comply with labour legislation and the suspension of payment in case of breach. Since sector-wide agreements in Argentina bind everyone, contractors' workers would then receive sector-level pay.

4. Colombia Compra Eficiente should direct the money under the wage payment guarantee to the workers rather than to the contracting authority.

5. The Mexican Social Security Institute should, in its next tenders, remove from its standard contract the clause that releases the contracting authority from liability towards the contractor's workers, or give those workers payment protection in its place, through withholding of payments or a guarantee.

6. The ILO Committee of Experts should resume its comments on Brazil and ask the ratifying countries how contracting authorities check payments and what courts and audit bodies say about it. Trade unions in Brazil should formally notify the contracting authority of every instance of non-payment, because under the 2025 decision the authority's inaction after such notice counts as fault.

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