TWENTY FIFTH INTERNATIONAL LABOUR CONFERENCE SESSION ON 27 JUNE 1939 - AT GENEVA

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CONTRACTS OF EMPLOYMENT (INDIGENOUS WORKERS)

Convention Concerning the Regulation of Written Contracts of Employment of Indigenous Workers .

Entry into force: 08 July 1948

Preamble

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Twenty-fifth Session on 8 June 1939, and

Having decided upon the adoption of certain proposals with regard to the regulation of contracts of employment of indigenous workers, which is the second item on the agenda of the Session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-seventh day of June of the year one thousand nine hundred and thirty-nine the following Convention, which may be cited as the Contracts of Employment (Indigenous Workers) Convention, 1939:

Article 1

For the purpose of this Convention--

- (a) the term ***worker*** means an indigenous worker, that is to say a worker belonging to or assimilated to the indigenous population of a dependent territory of a Member of the Organisation or belonging to or assimilated to the dependent indigenous population of the home territory of a Member of the Organisation;
- (b) the term ***employer*** includes, unless the contrary intention appears, any public authority, individual, company or association, whether non-indigenous or indigenous;
- (c) the term ***regulations*** means the law and/or regulations in force in the territory concerned; and
- (d) the term ***contract*** , when used in an article following Article 3, means, unless the contrary intention appears, a contract which is required by Article 3 to be made in writing.

Article 2

- 1. This Convention applies to contracts of employment by which a worker enters the service of an employer as a manual worker for remuneration in cash or in any other form whatsoever.
- 2. The competent authority may exclude from the application of this Convention contracts by which a worker enters the service of an indigenous employer who does not employ more than a limited number of workers prescribed by the regulations or satisfy some other criterion prescribed thereby.
- 3. This Convention does not apply to contracts of apprenticeship made in accordance with special provisions relating to apprenticeship contained in the regulations.
- 4. The competent authority may, if necessary, exclude from the application of this Convention any contract of employment under which the only or principal remuneration granted to the worker is the occupancy or use of land belonging to his employer.

Article 3

- 1. When a contract to which this Convention applies--
  - (a) is made for a period of or exceeding six months or a number of working days equivalent to six months, or
  - (b) stipulates conditions of employment which differ materially from those customary in the district of employment for similar work,

  the contract shall be made in writing.
- 2. The method by which the worker shall indicate his assent to the contract shall be prescribed by the regulations.
- 3. If a contract which is required by paragraph 1 of this Article to be made in writing has not been made in writing it shall not be enforceable except during the maximum period permissible for contracts not made in writing, but each of the parties shall be entitled to have it drawn up in writing at any time prior to the expiry of the period for which it was made.
- 4. If the omission to make the contract in writing was due to the wilful act or the negligence of the employer, the worker shall be entitled to apply to the competent authority for the cancellation of the contract and, in appropriate cases, to sue for damages.

Article 4

- 1. No contract shall be deemed to be binding on the family or dependants of the worker unless it contains an express provision to that effect.
- 2. The employer shall be responsible for the performance of any contract made by any person acting on his behalf.

Article 5

- 1. Every contract shall contain all such particulars as may be necessary in conjunction with the provisions of the regulations to define the rights and obligations of the parties.
- 2. The particulars to be contained in the contract shall in all cases include--
  - (a) the name of the employer or group of employers and where practicable of the undertaking and of the place of employment;
  - (b) the name of the worker, the place of engagement and where practicable the place of origin of the worker, and any other particulars necessary for his identification;
  - (c) the nature of the employment;
  - (d) the duration of the employment and the method of calculating this duration;
  - (e) the rate of wages and method of calculation thereof, the manner and periodicity of payment of wages, the advances of wages, if any, and the manner of repayment of any such advances;
  - (f) the conditions of repatriation; and
  - (g) any special conditions of the contract.

Article 6

- 1. Every contract shall be presented for attestation to a public officer duly accredited for the purpose.
- 2. Before attesting any contract the public officer shall--
  - (a) ascertain that the worker has freely consented to the contract and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake; and
  - (b) satisfy himself that--
    - (i) the contract is in due legal form;
    - (ii) the terms of the contract are in accordance with the requirements of the regulations;
    - (iii) the worker has fully understood the terms of the contract before signing it or otherwise indicating his assent;
    - (iv) the provisions of the regulations relating to medical examination have been complied with; and
    - (v) the worker declares himself not bound by any previous engagement.

- 3. A contract which the public officer has refused to attest shall have no further validity.
- 4. A contract which has not been presented to the public officer for attestation shall not be enforceable except during the maximum period permissible for contracts not made in writing, but each of the parties shall be entitled to have it presented for attestation at any time prior to the expiry of the period for which it was made.
- 5. If the omission to present the contract for attestation was due to the wilful act or the negligence of the employer, the worker shall be entitled to apply to the competent authority for the cancellation of the contract and, in appropriate cases, to sue for damages.
- 6. Every contract shall be registered by the competent authority or a copy thereof shall be deposited with the said authority.
- 7. The competent authority shall by the issue to the worker of a copy of the contract, of a work-book, or of an equivalent document or token, or in such other manner as it may deem appropriate, take such measures as may be necessary to enable the worker--
  - (a) to prove the existence and terms of the contract; and
  - (b) to verify at any time the terms of the contract.

Article 7

- 1. Every worker who enters into a contract shall be medically examined.
- 2. As a general rule the worker shall be medically examined and a medical certificate issued before the attestation of the contract.
- 3. Where it has not been possible for the worker to be medically examined before the attestation of the contract, the public officer who attests the contract shall endorse it to this effect and the worker shall be examined at the earliest possible opportunity.
- 4. The competent authority may exempt from the requirement of medical examination workers entering into contracts for--
  - (a) employment in agricultural undertakings not employing more than a limited number of workers prescribed by the regulations;
  - (b) employment in the vicinity of the workers' homes--
    - (i) in agricultural work;
    - (ii) in non-agricultural work which the competent authority is satisfied is not of a dangerous character or likely to be injurious to the health of the workers.

Article 8

- 1. A non-adult person whose apparent age is less than a minimum age to be prescribed by the regulations shall not be capable of entering into a contract.
- 2. A non-adult person whose apparent age exceeds the minimum age but is less than a higher age to be prescribed by the regulations shall not be capable of entering into a contract except for employment in an occupation approved by the competent authority as not being injurious to the moral or physical development of non-adults.

Article 9

The maximum period of service that may be stipulated in any contract, and the leave, if any, to be granted during the period of the contract, shall be prescribed by the regulations.

Article 10

- 1. The transfer of any contract from one employer to another shall be subject to the consent of the worker and the endorsement of the transfer upon the contract by a public officer duly accredited for the purpose.
- 2. Before endorsing the transfer upon the contract the public officer shall--
  - (a) ascertain that the worker has freely consented to the transfer and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake; and
  - (b) in such cases as may be prescribed by the regulations, satisfy himself that the requirements of Article 6, paragraph 2 (b), of this Convention have been fulfilled.

Article 11

- 1. A contract shall be terminated--
  - (a) by the expiry of the term for which it was made; or
  - (b) by the death of the worker before the expiry of the term for which it was made.
- 2. The termination of a contract by the death of a worker shall be without prejudice to the legal claims of his heirs or dependants.

Article 12

- 1. If the employer is unable to fulfil the contract or if owing to sickness or accident the worker is unable to fulfil the contract, the contract shall be subject to termination under conditions to be prescribed by the regulations, which shall include provisions safeguarding in such cases the right of the worker to any wages earned, any deferred pay due to him, any compensation due to him in respect of accident or disease, and his right to repatriation.

- 2. A contract shall be subject to termination by agreement between the parties under conditions to be prescribed by the regulations, which shall include provisions--
  - (a) safeguarding the worker from the loss of his right to repatriation unless the agreement for the termination of the contract otherwise provides; and
  - (b) requiring the competent authority to satisfy itself--
    - (i) that the worker has freely consented to the agreement and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake; and
    - (ii) that all monetary liabilities between the parties have been settled.
- 3. A contract shall be subject to termination on the application of either party in the cases and under conditions to be prescribed by the regulations, which shall include provisions prescribing--
  - (a) the period of notice, if any, to be given by the party wishing to terminate the contract; and
  - (b) an equitable settlement of monetary and other questions arising from such termination, including the question of repatriation.
- 4. The cases in which a contract shall be subject to termination in accordance with the preceding paragraph shall include cases of ill-treatment of the worker by the employer.
- 5. The regulations may prescribe other cases in which a contract shall be subject to termination and may provide for cases in which the termination of a contract in accordance with this Article shall be subject to the approval of the competent authority.

Article 13

- 1. Every worker who is a party to a contract and who has been brought to the place of employment by the employer or by any person acting on behalf of the employer shall have the right to be repatriated at the expense of the employer to his place of origin or engagement, whichever is the nearer to the place of employment, in the following cases:
  - (a) on the expiry of the period of service stipulated in the contract;
  - (b) on the termination of the contract by reason of the inability of the employer to fulfil the contract;
  - (c) on the termination of the contract by reason of inability of the worker to fulfil the contract owing to sickness or accident;
  - (d) on the termination of the contract by agreement between the parties unless the agreement otherwise provides;

- (e) on the termination of the contract on the application of either of the parties, unless the competent authority otherwise decides.

- 2. Where the family of the worker has been brought to the place of employment by the employer or by any person acting on behalf of the employer, the family shall be repatriated at the expense of the employer whenever the worker is repatriated or in the event of his death.

- 3. The expenses of repatriation shall include--
  - (a) travelling and subsistence expenses during the journey; and
  - (b) subsistence expenses during the period, if any, between the date of expiry of the contract and the date of repatriation.

- 4. The employer shall not be liable for subsistence expenses in respect of any period during which the repatriation of the worker has been delayed--
  - (a) by the worker's own choice; or
  - (b) for reasons of force majeure, unless the employer has been able during the said period to use the services of the worker at the rate of wages stipulated in the expired contract.

- 5. If the employer fails to fulfil his obligations in respect of repatriation, the said obligations shall be discharged by the competent authority.

Article 14

The competent authority may exempt the employer from liability for repatriation expenses in the following cases:

- (a) when the competent authority is satisfied--
  - (i) that the worker, by a declaration in writing or otherwise, has signified that he does not wish to exercise his right to repatriation; and
  - (ii) that the worker has been settled at his request or with his consent at or near the place of employment;
- (b) when the competent authority is satisfied that the worker, by his own choice, has failed to exercise his right to repatriation before the expiry of a prescribed period from the date of expiry or termination of the contract;
- (c) when the contract has been terminated by the competent authority in consequence of a fault of the worker;

- (d) when the contract has been terminated otherwise than by reason of the inability of the worker to fulfil the contract owing to sickness or accident and the competent authority is satisfied--
  - (i) that in fixing the rates of wages proper allowance has been made for the payment of repatriation expenses by the worker; and
  - (ii) that suitable arrangements have been made by means of a system of deferred pay or otherwise to ensure that the worker has the funds necessary for the payment of such expenses.

Article 15

- 1. The employer shall whenever possible provide transport for workers who are being repatriated.
- 2. The competent authority shall take all necessary measures to ensure--
  - (a) that the vehicles or vessels used for transport of workers are suitable for such transport, are in good sanitary condition and are not overcrowded;
  - (b) that when it is necessary to break the journey for the night, suitable accommodation is provided for the workers;
  - (c) that when the workers have to make long journeys on foot, the length of the daily journey is compatible with the maintenance of their health and strength; and
  - (d) that in the case of long journeys, all necessary arrangements are made for medical assistance and for the welfare of the workers.
- 3. When the workers have to make long journeys in groups they shall be convoyed by a responsible person.

Article 16

- 1. The maximum period of service that may be stipulated in any re-engagement contract made on the expiry of a contract shall be prescribed by the regulations, but shall as a general rule be shorter than that prescribed in pursuance of Article 9 of this Convention.
- 2. Where the period of service to be stipulated in any re-engagement contract, together with the period already served under the expired contract, involves the separation of any worker from his family for more than eighteen months, the worker shall not begin the service stipulated in the re-engagement contract until he has had the opportunity to return home at the employer's expense. Provided that the competent authority may grant exemption from this provision whenever its application is impracticable or undesirable.

- 3. Except as provided in paragraphs 1 and 2 of this Article, all the provisions of the preceding articles shall apply to re-engagement contracts. Provided that the competent authority may at its discretion exempt such contracts from the provisions of Article 6, paragraphs 1 to 5, and Article 7.

Article 17

- 1. The competent authority shall, where necessary, cause concise summaries of the regulations relating to contracts to be printed in the official language or languages of the territory concerned and in a language known to the workers and shall make such summaries available to the employers and workers concerned.
- 2. Where necessary, the employer shall be required to post such summaries in a language known to the workers in conspicuous places.

Article 18

The regulations shall include adequate provisions for the protection of workers when a contract made in one territory relates to employment in a territory under a different administration.

Article 19

- 1. When a contract made in one territory (hereinafter called the territory of origin) relates to employment in a territory under a different administration (hereinafter called the territory of employment), the provisions of this Convention shall be applied in the following manner:
  - (a) the attestation of the contract required by Article 6 shall take place before a public officer of the territory of origin before the worker leaves that territory;
  - (b) the measures required by paragraph 7 of Article 6 shall be taken by the competent authority of the territory of origin;
  - (c) the medical examination required by Article 7 shall take place at latest at the place of the departure of the worker from the territory of origin;
  - (d) a non-adult person whose apparent age is less than either the minimum age prescribed by the regulations of the territory of origin or the minimum age prescribed by the regulations of the territory of employment shall not be capable of entering into a contract;
  - (e) the endorsement of a transfer on a contract by a public officer as required by Article 10 shall be made by an officer of the territory where the worker consents to the transfer;
  - (f) the period of service stipulated in the contract shall not exceed either the maximum period prescribed by the regulations of the territory of origin or the maximum period prescribed by the regulations of the territory of employment;
  - (g) the conditions under which the contract is subject to termination shall be determined by the regulations of the territory of employment;

- (h) if the employer fails to fulfil his obligations in respect of repatriation, the said obligations shall be discharged by the competent authority of the territory of employment;
- (i) the competent authority which may exempt the employer from liability for repatriation expenses shall be the competent authority of the territory of employment;
- (j) the competent authorities of the territories of origin and employment shall co-operate to ensure the application of paragraph 2 of Article 15;
- (k) the period of service stipulated in any re-engagement contract shall not exceed either the maximum period prescribed by the regulations of the territory of origin or the maximum period prescribed by the regulations of the territory of employment.

- 2. When the Convention is not in force for both the territory of origin and the territory of employment, the rules set forth in the preceding paragraph shall apply subject to the following provisions:
  - (a) when the Convention is not in force for the territory of employment, the public officer of the territory of origin shall not attest the contract unless he is satisfied that the worker will be entitled in the territory of employment, either in virtue of the regulations of that territory or in virtue of the terms of the contract, to the rights and protection specified in Articles 10 to 16 of the Convention;
  - (b) when the Convention is not in force for the territory of origin, the matters which subparagraphs (a), (b) and (c) of paragraph 1 of this Article require to be dealt with by the competent authority of the territory of origin shall be dealt with by the competent authority of the territory of employment unless the latter authority is satisfied that they have in fact been dealt with in accordance with the terms of the Convention by the competent authority of the territory of origin.
- 3. The competent authorities of the territories of origin and of employment shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Convention, and may in any such agreement derogate from the provisions of paragraph 1 of this Article in respect of contracts made in one territory party to the agreement for employment in another such territory.

Article 20

- 1. This Convention does not apply to contracts entered into before the coming into force of the Convention for the territory where the question of its applicability arises.
- 2. The denunciation of this Convention shall not affect rights or obligations arising from contracts entered into before the denunciation took effect.

Article 21

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 22:

- 1. In respect of the territories referred to in article 35 of the Constitution of the International Labour Organisation, each Member of the Organisation which ratifies this Convention shall append to its ratification a declaration stating--
  - (a) the territories to which it undertakes to apply the provisions of the Convention without modification;
  - (b) the territories to which it undertakes to apply the provisions of the Convention subject to modifications, together with details of the said modifications;
  - (c) the territories to which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
  - (d) the territories in respect of which it reserves its decision.
- 2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.
- 3. Any Member may by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

Article 23

- 1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
- 2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
- 3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 24

- 1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
- 2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of

denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 25

- 1. The Director-General of the International Labour Office shall notify all the Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation and of all declarations communicated to him in accordance with the provisions of Article 22 of this Convention.
- 2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 26

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 27

- 1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:
  - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 24 above, if and when the new revising Convention shall have come into force;
  - (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
- 2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.