



REPUBLIC OF KENYA

Sessional Paper No. 7 of 1963/65

INTERNATIONAL LABOUR CONFERENCE

**Proposed action by the Republic of Kenya on certain
Conventions and Recommendations adopted by the
International Labour Conference**

Two Shillings - 1965

INTERNATIONAL LABOUR ORGANIZATION

Presentation to the National Assembly of Kenya of a Convention and two Recommendations adopted by the International Labour Conference at its 47th Session in June 1963, and the views thereon of the Government of Kenya, which it is proposed to communicate to the Director General of the International Labour Office; and proposals on the ratification of two earlier International Labour Conventions.

The texts of the Conventions and Recommendations are given in the Appendix to this Paper.

CONVENTION 119 ON THE GUARDING OF MACHINERY, 1963

The Convention aims to prevent the sale, hire or exhibition, and the use of machinery that is inadequately guarded, and it covers all branches of economic activity.

The guarding of machinery is statutorily regulated in Kenya under the Factories Act, Cap. 514. The control for sale or hire, etc., under this Act is less complete than that required by the Convention. The use of inadequately guarded machinery is also controlled by the Factories Act but this does not extend to all the branches of industrial and agricultural activity covered by the Convention. It would not yet be possible to extend or to enforce control over the very much wider field required. To ratify the Convention with declarations of temporary exemptions from substantial parts of it would not be realistic.

The Government reserves its decision on the ratification of this Convention for the time being.

RECOMMENDATION 118 ON THE GUARDING OF MACHINERY, 1963

The Recommendation covers similar grounds but extending somewhat wider and setting more advanced standards than the Convention, including manufacture and design as well as sale, and also covering a wider definition of machinery to be guarded. It would not be possible to extend and enforce the necessary statutory provisions in the manner required.

The Government cannot accept this Recommendation at present.

Consideration will be given to extending control in the ways required by the Convention and Recommendation as and when circumstances permit.

RECOMMENDATION 119 ON TERMINATION OF EMPLOYMENT AT THE INITIATIVE OF THE EMPLOYER, 1963

This Recommendation seeks to ensure that workers are protected against dismissal by an employer except for valid reasons such as the capacity or conduct of the worker or the operational requirements of the employer's business; and in particular to protect workers against dismissal on ground, *inter alia*, of union membership or activities, or on any discriminatory grounds whatever.

Effect is given to the main provisions of the Recommendation in national legislation by the Employment Act, Cap. 226, and by statutory Wages Regulation Orders made by the Minister for Labour on the recommendations of Wages Councils set up under the Wages and Conditions of Employment Act, Cap. 229. The application of the Employment Act is, however, at present limited to workers earning less than a certain amount. In relation to those proposals in the Recommendation for which there is no provision in Kenya law and the

categories of workers not covered by the law, national practice conforms in general to the standards laid down. The Industrial Relations Charter, within the terms of which joint agreements are drawn up, also reflects the general objectives of the Recommendation. The provision in paragraph 9 requiring some form of income protection for workers dismissed cannot yet be applied by the Government.

The Government is unable to give full effect to this Recommendation at present for the reasons indicated.

**CONVENTION 89 ON NIGHT WORK OF WOMEN (INDUSTRY)
(REVISED) 1948**

This Convention deals with the prohibition of the employment of women in industrial establishments at night. Its provisions are given effect in the Employment of Women, Young Persons and Children's Act, Cap. 227. The Government therefore intends to communicate to the Director-General of the International Labour Office, its ratification of this Convention.

**CONVENTION 97 ON MIGRATION FOR EMPLOYMENT
(REVISED) 1949**

This Convention is concerned with both immigration and emigration for employment, whether temporary or permanent and its underlying purpose is that the migrant should be in the same position as the national in respect of conditions of employment, trade union membership, and certain other facilities, and should be subject to no discrimination simply because he is a migrant. It also provides that there should be certain facilities available and safeguards for the migrant in his actual movement from one country to another. Three Annexures deal respectively with the migration of non-Government sponsored workers, Government sponsored transfers and customs concessions on the importation of migrants' tools and effects. Their adoption is optional.

It is the policy of the Government to apply the principles of this Convention and its main provisions are met in the law and practice of Kenya. Immigration is governed by the Immigration Act, Cap. 172, and the Immigration Regulations. Both the Immigration Department and the Labour Department, which keep in close touch over immigration, are concerned to see that there are proper arrangements for the transfer and reception of migrants, and that immigrants for employment will receive wages and conditions of employment no less favourable than those of nationals. The Labour Department ensures that satisfactory wages, conditions of employment and transfer arrangements are provided for Kenya nationals engaged for foreign service at a wage not exceeding Sh. 400 per month.

The Government intends to communicate to the Director-General of the International Labour Office its ratification of this Convention, subject to the exclusion of the three Annexures.

INTERNATIONAL LABOUR CONVENTION 119

Convention concerning the Guarding of Machinery

The General Conference of the International Labour Organization—

having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-seventh Session on 5th June 1963; and

having decided upon the adoption of certain proposals with regard to the prohibition of the sale, hire and use of inadequately guarded machinery, which is the fourth item on the agenda of the session; and

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

adopts this twenty-fifth day of June of the year one thousand nine hundred and sixty-three the following Convention, which may be cited as the Guarding of Machinery Convention, 1963:

PART I—GENERAL PROVISIONS

Article 1

1. All power-driven machinery, new or second-hand, shall be considered as machinery for the purpose of the application of this Convention.

2. The competent authority in each country shall determine whether and how far machinery, new or second-hand, operated by manual power presents a risk of injury to the worker and shall be considered as machinery for the purpose of the application of this Convention. Such decisions shall be taken after consultation with the most representative organizations of employers and workers concerned. The initiative for such consultation can be taken by any such organization.

3. The provisions of this Convention—

- (a) apply to road and rail vehicles during locomotion only in relation to the safety of the operator or operators;
- (b) apply to mobile agricultural machinery only in relation to the safety of workers employed in connexion with such machinery.

PART II—SALE, HIRE, TRANSFER IN ANY OTHER MANNER AND EXHIBITION

Article 2

1. The sale and hire of machinery of which the dangerous parts specified in paragraphs 3 and 4 of this Article are without appropriate guards shall be prohibited by national laws or regulations or prevented by other equally effective measures.

2. The transfer in any other manner and exhibition of machinery of which the dangerous parts specified in paragraphs 3 and 4 of this Article are without appropriate guards shall, to such extent as the competent authority may determine, be prohibited by national laws or regulations or prevented by other equally effective measures: Provided that during the exhibition of machinery the temporary removal of the guards in order to demonstrate the machinery shall not be deemed to be an infringement of this provision as long as appropriate precautions to prevent danger to persons are taken.

3. All set-screws, bolts and keys, and, to the extent prescribed by the competent authority, other projecting parts of any moving part of machinery also liable to present danger to any person coming into contact with them when they are in motion, shall be so designed, sunk or protected as to prevent such danger.

4. All flywheels, gearing, cone and cylinder friction drives, cams, pulleys, belts, chains, pinions, worm gears, crank arms and slide blocks, and, to the extent prescribed by the competent authority, shafting (including the journal ends) and other transmission machinery also liable to present danger to any person coming into contact with them when they are in motion, shall be so designed or protected as to prevent such danger. Controls also shall be so designed or protected as to prevent danger.

Article 3

1. The provision of Article 2 do not apply to machinery or dangerous parts thereof specified in that Article which—

- (a) are, by virtue of their construction, as safe as if they were guarded by appropriate safety devices; or
- (b) are intended to be so installed or placed that, by virtue of their installation or position, they are as safe as if they were guarded by appropriate safety devices.

2. The prohibition of the sale, hire, transfer in any other manner or exhibition of machinery provided for in paragraphs 1 and 2 of Article 2 does not apply to machinery by reason only of the machinery being so designed that the requirements of paragraphs 3 and 4 of that Article are not fully complied with during maintenance, lubrication, setting-up and adjustment, if such operations can be carried out in conformity with accepted standards of safety.

3. The provisions of Article 2 do not prohibit the sale or transfer in any other manner of machinery for storage, scrapping or reconditioning, but such machinery shall not be sold, hired, transferred in any other manner or exhibited after storage or reconditioning unless protected in conformity with the said

Article 4

The obligation to ensure compliance with the provisions of Article 2 shall rest on the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor and, where appropriate under national laws or regulations, on their respective agents. This obligation shall rest on the manufacturer when he sells machinery, lets it out on hire, transfers it in any other manner or exhibits it.

Article 5

1. Any Member may provide for a temporary exemption from the provisions of Article 2.

2. The duration of such temporary exemption, which shall in no case exceed three years, from the coming into force of the Convention for the Member concerned, and any other conditions relating thereto, shall be prescribed by national laws or regulations or determined by other equally effective measures.

3. In the application of this Article the competent authority shall consult the most representative organizations of employers and workers concerned and, as appropriate, manufacturers' organizations.

PART III—USE

Article 6

1. The use of machinery any dangerous part of which, including the point of operation, is without appropriate guards shall be prohibited by national laws or regulations or prevented by other equally effective measures: Provided that where this prohibition cannot fully apply without preventing the use of the machinery it shall apply to the extent that the use of the machinery permits.

2. Machinery shall be so guarded as to ensure that national regulations and standards of occupational safety and hygiene are not infringed.

Article 7

The obligation to ensure compliance with the provisions of Article 6 shall rest on the employer.

Article 8

1. The provisions of Article 6 do not apply to machinery or parts thereof which, by virtue of their construction, installation or position, are as safe as if they were guarded by appropriate safety devices.

2. The provisions of Article 6 and Article 11 do not prevent the maintenance, lubrication, setting-up or adjustment of machinery or parts thereof carried out in conformity with accepted standards of safety.

Article 9

1. Any Member may provide for a temporary exemption from the provisions of Article 6.

2. The duration of such temporary exemption, which shall in no case exceed three years from the coming into force of the Convention for the Member concerned, and any other conditions relating thereto, shall be prescribed by national laws or regulations or determined by other equally effective measures.

3. In the application of this Article the competent authority shall consult the most representative organizations of employers and workers concerned.

Article 10

1. The employer shall take steps to bring national laws or regulations relating to the guarding of machinery to the notice of workers and shall instruct them, as and where appropriate, regarding the dangers arising and the precautions to be observed in the use of machinery.

2. The employer shall establish and maintain such environmental conditions as not to endanger workers employed on machinery covered by this Convention.

Article 11

1. No worker shall use any machinery without the guards provided being in position, nor shall any worker be required to use any machinery without the guards provided being in position.

2. No worker using machinery shall make inoperative the guards provided, nor shall such guards be made inoperative on any machinery to be used by any worker.

Article 12

The ratification of this Convention shall not affect the rights of workers under national social security or social insurance legislation.

Article 13

The provisions of this Part of this Convention relating to the obligations of employers and workers shall, if and in so far as the competent authority so determines, apply to self-employed workers.

Article 14

The term "employer" for the purpose of this Part of this Convention includes, where appropriate under national laws or regulations, a prescribed agent of the employer.

PART IV—MEASURES OF APPLICATION

Article 15

1. All necessary measures, including the provision of appropriate penalties, shall be taken to ensure the effective enforcement of the provisions of this Convention.

2. Each Member which ratifies this Convention undertakes to provide appropriate inspection services for the purpose of supervising the application of the provisions of the Convention, or to satisfy itself that appropriate inspection is carried out.

Article 16

Any national laws or regulations giving effect to the provisions of this Convention shall be made by the competent authority after consultation with the most representative organizations of employers and workers concerned and, as appropriate, manufacturers' organizations.

PART V—SCOPE

Article 17

1. The provisions of this Convention apply to all branches of economic activity unless the Member ratifying the Convention specifies a more limited application by a declaration appended to its ratification.

2. In cases where a declaration specifying a more limited application is made—

(a) the provisions of the Convention shall be applicable as a minimum to undertakings or branches of economic activity in respect of which the competent authority, after consultation with the labour inspection services and with the most representative organizations of employers and workers concerned, determines that machinery is extensively used; the initiative for such consultation can be taken by any such organization;

(b) the Member shall indicate in its reports under article 22 of the Constitution of the International Labour Organization any progress which may have been made with a view towards wider application of the provisions of this Convention.

3. Any Member which has made a declaration in pursuance of paragraph 1 of this Article may at any time cancel that declaration in whole or in part by a subsequent declaration.

PART VI—FINAL PROVISIONS

Article 18

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

Article 19

1. This Convention shall be binding only upon those Members of the International Labour Organization 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 20

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 of 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 21

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations communicated to him by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 22

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 23

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 24

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 20 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.

Article 25

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organization during its Forty-seventh Session which was held at Geneva and declared closed the twenty-sixth day of June 1963.

IN FAITH WHEREOF we have appended our signatures this twenty-seventh day of June 1963.

INTERNATIONAL LABOUR RECOMMENDATION 118

Recommendation concerning the Guarding of Machinery

The General Conference of the International Labour Organization—

having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-seventh Session on 5th June 1963; and

having decided upon the adoption of certain proposals with regard to the prohibition of the sale, hire and use of inadequately guarded machinery, which is the fourth item on the agenda of the session, and

having determined that these proposals shall take the form of a Recommendation supplementing the Guarding of Machinery Convention, 1963,

adopts this twenty-fifth day of June of the year one thousand nine hundred and sixty-three the following Recommendations, which may be cited as the Guarding of Machinery Recommendation, 1963:

I—MANUFACTURE, SALE, HIRE, TRANSFER IN ANY OTHER MANNER AND EXHIBITION

1. (1) The manufacture, sale, hire, and, to such extent as the competent authority may determine, the transfer in any other manner and exhibition of specified types of machinery should be prohibited by national laws or regulations or prevented by other equally effective measures when this machinery, as defined in Article 1 of the Guarding Machinery Convention, 1963, comprises, in addition to the parts specified in Article 2 thereof, dangerous working parts (at the point of operation) which are without appropriate guards.

(2) The provisions of subparagraph (1) of this paragraph and of paragraph 2 should be considered in the design of the machinery in question.

(3) The types of machinery referred to in subparagraph (1) should be specified by national laws or regulations or other equally effective measures.

2. In specifying the types of machinery covered by paragraph 1 account should also be taken of the following provisions—

(a) all working parts of machinery which, while in operation, may produce flying particles should be adequately guarded in such a manner as to ensure the safety of the operators;

(b) all parts of machinery which are under dangerous electrical pressure should be protected in such a manner as to give complete protection to the workers;

(c) wherever possible, automatic safeguards should protect persons when machinery is being started, is in operation or is being stopped;

(d) machinery should be so constructed as to exclude as far as possible any dangers other than those specified in this paragraph to which a person working on the machines may be exposed, taking account of the nature of the materials or the type of danger.

3. (1) The provisions of paragraph 1 do not apply to machinery or working parts thereof specified in that paragraph which—

(a) are, by virtue of their construction, as safe as if they were guarded by appropriate safety devices; or

(b) are intended to be so installed or placed that, by virtue of their installation or position, they are as safe as if they were guarded by appropriate safety devices.

(2) The prohibition of the manufacture, sale, hire, transfer in any other manner, or exhibition of machinery provided for in paragraph 1 does not apply to machinery by reason only of the machinery being so designed that the requirements of that paragraph concerning guarding are not fully complied with during maintenance, lubrication, setting-up and adjustment, if such operations can be carried out in conformity with accepted standards of safety.

(3) The provisions of paragraph 1 do not prohibit the sale or transfer in any other manner of machinery for storage, scrapping or reconditioning, but such machinery should not be sold, hired, transferred in any other manner or exhibited after storage or reconditioning unless protected in conformity with the said provisions.

4. The obligation to ensure compliance with the provisions of paragraph 1 should rest on the manufacturer, the vendor, the person letting out on hire or transferring the machinery in any other manner, or the exhibitor, and, where appropriate under national laws or regulations, their respective agents.

5. (1) Any Member may provide for a temporary exemption from the provisions of paragraph 1.

(2) The duration of such temporary exemption, which should in no case exceed three years, and any other conditions relating thereto, should be prescribed by national laws or regulations or determined by other equally effective measures.

(3) In the application of this paragraph the competent authority should consult the most representative organizations of employers and workers concerned and, as appropriate, manufacturers' organizations.

6. Any operating instructions for machinery should be based on safe methods of operation.

II—Use

7. (1) The use of machinery any dangerous part of which, including the point of operation, is without appropriate guards should be prohibited by national laws or regulations or prevented by other equally effective measures: Provided that where this prohibition cannot fully apply without preventing the use of the machinery it should apply to the extent that the use of the machinery permits.

(2) Machinery should be so guarded as to ensure that national regulations and standards of occupational safety and hygiene are not infringed.

8. The obligation to ensure compliance with the provisions of paragraph 7 should rest on the employer.

9. (1) The provisions of paragraph 7 do not apply to machinery or parts thereof which, by virtue of their construction, installation or position, are as safe as if they were guarded by appropriate safety devices.

(2) The provisions of paragraph 7 and paragraph 12 do not prevent the maintenance, lubrication, setting-up or adjustment of machinery or parts thereof carried out in conformity with accepted standards of safety.

10. (1) Any Member may provide for a temporary exemption from the provisions of paragraph 7.

(2) The duration of such temporary exemption, which should in no case exceed three years, and any other conditions relating thereto, should be prescribed by national laws or regulations or determined by other equally effective measures.

(3) In the application of this paragraph the competent authority should consult the most representative organizations of employers and workers concerned.

11. (1) The employer should take steps to bring national laws or regulations relating to the guarding of machinery to the notice of workers and should instruct them, as and where appropriate, regarding the dangers arising and the precautions to be observed in the use of machinery.

(2) The employer should establish and maintain such environmental conditions as not to endanger workers employed on machinery covered by this Recommendation.

12. (1) No worker should use any machinery without the guards provided being in position, nor should any worker be required to use any machinery without the guards provided being in position.

(2) No worker using machinery should make inoperative the guards provided, nor should such guards be made inoperative on any machinery to be used by any worker.

13. The rights of workers under national social security or social insurance legislation should not be affected by the application of this Recommendation.

14. The provisions of this part of this Recommendation relating to the obligations of employers and workers should, if and in so far as the competent authority so determines, be applied to self-employed workers.

15. The term "employer" for the purpose of this part of this Recommendation includes, where appropriate under national laws and regulations, a prescribed agent of the employer.

III—SCOPE

16. This Recommendation applies to all branches of economic activity.

IV—MISCELLANEOUS PROVISIONS

17. (1) All necessary measures should be taken to ensure the effective enforcement of the provisions of this Recommendation. Such measures should include the fullest possible detailed specification of the means by which machinery or certain types thereof may be regarded as appropriately guarded, provision for effective inspection and provision for appropriate penalties.

(2) Each Member should provide appropriate inspection services for the purpose of supervising the application of this Recommendation, or satisfy itself that appropriate inspection is carried out.

18. (1) Members exporting or importing machinery should enter into bilateral or multilateral arrangements providing for mutual consultation and co-operation concerning the application of the Guarding of Machinery Convention, 1963, and this Recommendation in respect of transactions having an international character for the sale or hire of machinery.

(2) Such arrangements should provide, in particular, for uniformity in occupational safety and hygiene standards relating to machinery.

(3) In making such arrangements, Members should have regard to the relevant Model Codes of Safety Regulations and Codes of Practice published from time to time by the International Labour Office, and to the appropriate standards of international organizations for standardization.

19. National laws or regulations giving effect to the provisions of this Recommendation should be made by the competent authority after consultation with the most representative organizations of employers and workers concerned and, as appropriate, manufacturers' organizations.

The foregoing is the authentic text of the Recommendation duly adopted by the General Conference of the International Labour Organization during its Forty-seventh Session which was held at Geneva and declared closed the twenty-sixth day of June 1963.

IN FAITH WHEREOF we have appended our signatures this twenty-seventh day of June 1963.

INTERNATIONAL LABOUR RECOMMENDATION 119

Recommendation concerning Termination of Employment at the Initiative of the Employer

The General Conference of the International Labour Organization—
having been convened by the Governing Body of the International Labour Office, and having met in its Forty-seventh Session on 5th June 1963;
and

having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session; and

having determined that these proposals shall take the form of a Recommendation,

adopts this twenty-sixth day of June of the year one thousand nine hundred and sixty-three the following Recommendation, which may be cited as the Termination of Employment Recommendation, 1963:

I—METHODS OF IMPLEMENTATION

1. Effect may be given to this Recommendation through national laws or regulations, collective agreements, works rules, arbitration awards, or court decisions or in such other manner consistent with national practice as may be appropriate under national conditions.

II—STANDARDS OF GENERAL APPLICATION

2. (1) Termination of employment should not take place unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

(2) The definition or interpretation of such valid reason should be left to the methods of implementation set out in paragraph 1.

3. The following, *inter alia*, should not constitute valid reasons for termination of employment:

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of, a workers' representative;
- (c) the filing in good faith of a complaint or the participation in a proceeding against an employer involving alleged violation of laws or regulations; or
- (d) race, colour, sex, marital status, religion, political opinion, national extraction or social origin.

4. A worker who feels that his employment has been unjustifiably terminated should be entitled, unless the matter has been satisfactorily determined through such procedures within the undertaking, establishment or service, as may exist or be established consistent with this Recommendation, to appeal, within a reasonable time, against that termination with the assistance, where the worker so requests, of a person representing him to a body established under a collective agreement or to a neutral body such as a court, an arbitrator, an arbitration committee or a similar body.

5. (1) The bodies referred to in paragraph 4 should be empowered to examine the reasons given for the termination of employment and the other circumstances relating to the case and to render a decision on the justification of the termination.

(2) Subparagraph (1) should not be construed as implying that the neutral body should be empowered to intervene in the determination of the size of the work force of the undertaking, establishment or service.

6. The bodies referred to in paragraph 4 should be empowered, if they find that the termination of employment was unjustified, to order that the worker concerned, unless reinstated, where appropriate with payment of unpaid wages, should be paid adequate compensation, or afforded such other relief as may be determined under the methods of implementation set out in paragraph 1, or granted such compensation and other relief as may be so determined.

7. (1) A worker whose employment is to be terminated should be entitled to a reasonable period of notice or compensation in lieu thereof.

(2) During the period of notice the worker should, as far as practicable, be entitled to a reasonable amount of time off without loss in pay in order to seek other employment.

8. (1) The worker whose employment has been terminated should be entitled to receive, on request, at the time of the termination, a certificate from the employer specifying the dates of his engagement and termination and the type or types of work on which he was employed.

(2) Nothing unfavourable to the worker should be inserted in such certificate.

9. Some form of income protection should be provided for workers whose employment has been terminated; such protection may include unemployment insurance or other forms of social security, or severance allowance or other types of separation benefits paid for by the employer, or a combination of benefits, depending upon national laws or regulations, collective agreements and the personnel policy of the employer.

10. The question whether employers should consult with workers' representatives before a final decision is taken on individual cases of termination of employment should be left to the methods of implementation set out in paragraph 1.

11. (1) In case of dismissal for serious misconduct, a period of notice or compensation in lieu thereof need not be required, and the severance allowance or other types of separation benefits paid for by the employer, where applicable, may be withheld.

(2) Dismissal for serious misconduct should take place only in cases where the employer cannot in good faith be expected to take any other course.

(3) An employer should be deemed to have waived his right to dismiss for serious misconduct if such action has not been taken within a reasonable time after he has become aware of the serious misconduct.

(4) A worker should be deemed to have waived his right to appeal against dismissal for serious misconduct if he has not appealed within a reasonable time after he has been notified of the dismissal.

(5) Before a decision to dismiss a worker for serious misconduct becomes finally effective, the worker should be given an opportunity to state his case promptly, with the assistance where appropriate of a person representing him.

(6) In the implementation of this paragraph the definition or interpretation of "serious misconduct" as well as the determination of "reasonable time" should be left to the methods of implementation set out in paragraph 1.

III—SUPPLEMENTARY PROVISIONS CONCERNING REDUCTION OF THE WORK FORCE

12. Positive steps should be taken by all parties concerned to avert or minimize as far as possible reductions of the work force by the adoption of appropriate measures, without prejudice to the efficient operation of the undertaking, establishment or service.

13. (1) When a reduction of the work force is contemplated, consultation with workers' representatives should take place as early as possible on all appropriate questions.

(2) The questions on which consultation should take place might include measures to avoid the reduction of the work force, restriction of overtime, training and retraining, transfers between departments, spreading termination of employment over a certain period, measures for minimizing the effects of the reduction on the workers concerned, and the selection of workers to be affected by the reduction.

(3) As and when consultation takes place, both parties should bear in mind that there may be public authorities which might assist the parties in such consultation.

14. If a proposed reduction of the work force is on such a scale as to have a significant bearing on the manpower situation of a given area or branch of economic activity, the employer should notify the competent public authorities in advance of any such reduction.

15. (1) The selection of workers to be affected by a reduction of the work force should be made according to precise criteria, which it is desirable should be established wherever possible in advance, and which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers.

(2) These criteria may include—

(a) need for the efficient operation of the undertaking, establishment or service;

(b) ability, experience, skill and occupational qualifications of individual workers;

(c) length of service;

(d) age;

(e) family situation; or

(f) such other criteria as may be appropriate under national conditions,

the order and relative weight of the above criteria being left to national customs and practice.

16. (1) Workers whose employment has been terminated owing to a reduction of the work force should be given priority of re-engagement, to the extent possible, by the employer when he again engages workers.

(2) Such priority of re-engagement may be limited to a specified period of time; where appropriate, the question of the retention of seniority rights should be determined in accordance with national laws or regulations, collective agreements or other appropriate national practices.

(3) Re-engagement should be effected on the basis of the principles set out in paragraph 15.

(4) The rate of wages of re-engaged workers should not be adversely affected as a result of the interruption of their employment, regard being had to differences between their previous occupation and the occupation in which they are re-engaged and to any intervening changes in the structure of wages in the undertaking, establishment or service.

17. There should be full utilization of national employment agencies or other appropriate agencies to ensure, to the extent possible, that workers whose employment has been terminated as a result of a reduction of the work force are placed in alternative employment without delay.

IV—SCOPE

18. This Recommendation applies to all branches of economic activity and all categories of workers: Provided that the following may be excluded from its scope:

- (a) workers engaged for a specified period of time or a specified task in cases in which, owing to the nature of the work to be effected, the employment relationship cannot be of indeterminate duration;
- (b) workers serving a period of probation determined in advance and of reasonable duration;
- (c) workers engaged on a casual basis for a short period; and
- (d) public servants engaged in the administration of the State to the extent only that constitutional provisions preclude the application to them of one or more provisions of this Recommendation.

19. In accordance with the principle set forth in Article 19, paragraph 8, of the Constitution of the International Labour Organization, this Recommendation does not affect any provisions more favourable to the workers concerned than those contained herein.

20. This Recommendation should be considered as having been implemented in respect of workers whose conditions of employment are governed by special laws or regulations where those laws or regulations provide for such workers conditions which, in their entirety, are at least as favourable as the totality of those provided in this Recommendation.

The foregoing is the authentic text of the Recommendation duly adopted by the General Conference of the International Labour Organization during its Forty-seventh Session which was held at Geneva and declared closed the twenty-sixth day of June 1963.

IN FAITH WHEREOF we have appended our signatures this twenty-seventh day of June 1963.

INTERNATIONAL LABOUR CONVENTION 89 **Convention concerning Night Work of Women Employed** **in Industry (Revised 1948)**

The General Conference of the International Labour Organization—
having been convened at San Francisco by the Governing Body of the
International Labour Office, and having met in its Thirty-first Session
on 17th June 1948; and

having decided upon the adoption of certain proposals with regard to the partial revision of the Night Work (Women) Convention, 1919, adopted by the Conference at its First Session, and the Night Work (Women) Convention (Revised), 1934, adopted by the Conference at its Eighteenth Session, which is the ninth item on the agenda of the session; and

considering that these proposals must take the form of an international Convention,

adopts this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Night Work (Women) Convention (Revised), 1948:

PART I—GENERAL PROVISIONS

Article 1

1. For the purpose of this Convention, the term "industrial undertaking" includes particularly—

- (a) mines, quarries, and other works for the extraction of minerals from the earth;
- (b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in shipbuilding or in the generation, transformation or transmission of electricity or motive power of any kind;
- (c) undertakings engaged in building and civil engineering work, including constructional, repair, maintenance, alteration and demolition work.

2. The competent authority shall define the line of division which separates industry from agriculture, commerce and other non-industrial occupations.

Article 2

For the purpose of this Convention the term "night" signifies a period of at least eleven consecutive hours, including an interval prescribed by the competent authority of at least seven consecutive hours falling between ten o'clock in the evening and seven o'clock in the morning; the competent authority may prescribe different intervals for different areas, industries, undertakings or branches of industries or undertakings, but shall consult the employers' and workers' organizations concerned before prescribing an interval beginning after eleven o'clock in the evening.

Article 3

Women without distinction of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed.

Article 4

Article 3 shall not apply—

- (a) in cases of *force majeure*, when in any undertaking there occurs an interruption of work which it was impossible to foresee, and which is not of a recurring character;
- (b) in cases where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration when such night work is necessary to preserve the said materials from certain loss.

Article 5

1. The prohibition of night work for women may be suspended by the government, after consultation with the employers' and workers' organizations concerned, when in case of serious emergency the national interest demands it.

2. Such suspension shall be notified by the government concerned to the Director-General of the International Labour Office in its annual report on the application of the Convention.

Article 6

In industrial undertakings which are influenced by the seasons and in all cases where exceptional circumstances demand it, the night period may be reduced to ten hours on sixty days of the year.

Article 7

In countries where the climate renders work by day particularly trying, the night period may be shorter than that prescribed in the above articles if compensatory rest is accorded during the day.

Article 8

This Convention does not apply to—

- (a) women holding responsible positions of a managerial or technical character; and
- (b) women employed in health and welfare services who are not ordinarily engaged in manual work.

PART II—SPECIAL PROVISIONS FOR CERTAIN COUNTRIES

Article 9

In those countries where no government regulation as yet applies to the employment of women in industrial undertakings during the night, the term "night" may provisionally, and for a maximum period of three years, be declared by the government to signify a period of only ten hours, including an interval prescribed by the competent authority of at least seven consecutive hours falling between ten o'clock in the evening and seven o'clock in the morning.

Article 10

1. The provisions of this Convention shall apply to India subject to the modifications set forth in this Article.

2. The said provisions shall apply to all territories in respect of which the Indian legislature has jurisdiction to apply them.

3. The term "industrial undertaking" shall include—

- (a) factories as defined in the Indian Factories Act; and
- (b) mines to which the Indian Mines Act applies.

Article 11

1. The provisions of this Convention shall apply to Pakistan subject to the modifications set forth in this Article.

2. The said provisions shall apply to all territories in respect of which the Pakistan legislature has jurisdiction to apply them.

3. The term "industrial undertaking" shall include—

- (a) factories as defined in the Factories Act;
- (b) mines to which the Mines Act applies.

Article 12

1. The International Labour Conference may, at any session at which the matter is included in its agenda, adopt by a two-thirds majority draft amendments to any one or more of the preceding articles of Part II of this Convention.

2. Any such draft amendment shall state the Member or Members to which it applies, and shall, within the period of one year, or, in exceptional circumstances, of eighteen months from the closing of the session of the Conference, be submitted by the Member or Members to which it applies to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

3. Each such Member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the amendment to the Director-General of the International Labour Office for registration.

4. Any such draft amendment shall take effect as an amendment to this Convention on ratification by the Member or Members to which it applies.

PART III—FINAL PROVISIONS

Article 13

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

Article 14

1. This Convention shall be binding only upon those Members of the International Labour Organization 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 15

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 16

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations communicated to him by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 17

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 18

At the expiration of each period of ten years after the coming into force of this Convention, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall consider the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 19

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 15 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.

Article 20

The English and French versions of the text of this Convention are equally authoritative.

INTERNATIONAL LABOUR CONVENTION 97**Convention concerning Migration for Employment
(Revised 1949)**

The General Conference of the International Labour Organization—

having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8th June 1949; and

having decided upon the adoption of certain proposals with regard to the revision of the Migration for Employment Convention, 1939, adopted by the Conference at its Twenty-fifth Session, which is included in the eleventh item on the agenda of the session; and

considering that the proposals must take the form of an international Convention,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Migration for Employment Convention (Revised), 1949:

Article 1

Each Member of the International Labour Organization for which this Convention is in force undertakes to make available on request to the International Labour Office and to other Members—

- (a) information on national policies, laws and regulations relating to emigration and immigration;
- (b) information on special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment;
- (c) information concerning general agreements and special arrangements on these questions concluded by the Member.

Article 2

Each Member for which this Convention is in force undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information.

Article 3

1. Each Member for which this Convention is in force undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration.

2. For this purpose it will where appropriate act in co-operation with other Members concerned.

Article 4

Measures shall be taken as appropriate by each Member within its jurisdiction, to facilitate the departure, journey and reception of migrants for employment.

Article 5

Each Member for which this Convention is in force undertakes to maintain, within its jurisdiction, appropriate medical services responsible for—

- (a) ascertaining, where necessary, both at the time of departure and on arrival, that migrants for employment and the members of their families authorized to accompany or join them are in reasonable health;
- (b) ensuring that migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey and on arrival in the territory of destination.

Article 6

1. Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters—

- (a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities—
 - (i) remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;
 - (ii) membership of trade unions and enjoyment of the benefits of collective bargaining;
 - (iii) accommodation;
- (b) social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations—
 - (i) there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
 - (ii) national laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension;
- (c) employment taxes, dues or contributions payable in respect of the person employed; and
- (d) legal proceedings relating to the matters referred to in this Convention.

2. In the case of a federal State the provisions of this Article shall apply in so far as the matters dealt with are regulated by federal law or regulations or are subject to the control of federal administrative authorities. The extent to which and manner in which these provisions shall be applied in respect of matters regulated by the law or regulations of the constituent States, provinces or cantons, or subject to the control of the administrative authorities thereof, shall be determined by each Member. The Member shall indicate in its annual report upon the application of the Convention the extent to which the matters dealt with in this Article are regulated by federal law or regulations or are subject to the control of federal administrative authorities. In respect of matters which are regulated by the law or regulations of the constituent States, provinces or cantons, or are subject to the control of the administrative authorities thereof, the Member shall take the steps provided for in paragraph 7 (b) of Article 19 of the Constitution of the International Labour Organization.

Article 7

1. Each Member for which this Convention is in force undertakes that its employment service and other services connected with migration will co-operate in appropriate cases with the corresponding services of other Members.

2. Each Member for which this Convention is in force undertakes to ensure that the services rendered by its public employment service to migrants for employment are rendered free.

Article 8

1. A migrant for employment who has been admitted on a permanent basis and the members of his family who have been authorized to accompany or join him shall not be returned to their territory of origin or the territory from which he emigrated because the migrant is unable to follow his occupation by reason of illness contracted or injury sustained subsequent to entry, unless the person concerned so desires or an international agreement to which the Member is a party so provides.

2. When migrants for employment are admitted on a permanent basis upon arrival in the country of immigration the competent authority of that country may determine that the provisions of paragraph 1 of this Article shall take effect only after a reasonable period which shall in no case exceed five years from the date of admission of such migrants.

Article 9

Each Member for which this Convention is in force undertakes to permit, taking into account the limits allowed by national laws and regulations concerning export and import of currency, the transfer of such part of the earnings and savings of the migrant for employment as the migrant may desire.

Article 10

In cases where the number of migrants going from the territory of one Member to that of another is sufficiently large, the competent authorities of the territories concerned shall, whenever necessary or desirable, enter into agreement for the purpose of regulating matters of common concern arising in connexion with the application of the provisions of this Convention.

Article 11

1. For the purpose of this Convention the term "migrant for employment" means a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment.

2. This Convention does not apply to—

- (a) frontier workers;
- (b) short-term entry of members of the liberal professions and artistes; and
- (c) seamen.

Article 12

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

Article 13

1. This Convention shall be binding only upon those Members of the International Labour Organization 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 14

1. Each Member ratifying this Convention may, by a declaration appended to its ratification, exclude from its ratification any or all of the Annexes to the Convention.

2. Subject to the terms of any such declaration, the provisions of the Annexes shall have the same effect as the provisions of the Convention.

3. Any Member which makes such a declaration may subsequently by a new declaration notify the Director-General that it accepts any or all of the Annexes mentioned in the declaration; as from the date of the registration of such notification by the Director-General the provisions of such Annexes shall be applicable to the Member in question.

4. While a declaration made under paragraph 1 of this Article remains in force in respect of any Annex, the Member may declare its willingness to accept that Annex as having the force of a Recommendation.

Article 15

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organization shall indicate—

- (a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention and any or all of the Annexes shall be applied without modification;
- (b) the territories in respect of which it undertakes that the provisions of the Convention and any or all of the Annexes shall be applied subject to modifications, together with details of the said modifications;
- (c) the territories in respect of which the Convention and any or all of the Annexes, are inapplicable and in such cases the grounds on which they are inapplicable; and
- (d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraph (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 at any time 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.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 17, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 16

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraphs 4 and 5 of Article 35 of the Constitution of the International Labour Organization shall indicate whether the provisions of this Convention and or all of the Annexes will be applied in the territory concerned without modification or subject to modifications; and if the declaration indicates that the provisions of the Convention and any or all of the Annexes will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention or any or all of the Annexes are subject to denunciation in accordance with the provisions of Article 17, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 17

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.

3. At any time at which this Convention is subject to denunciation in accordance with the provisions of the preceding paragraphs any Member which does not so denounce it may communicate to the Director-General a declaration denouncing separately any Annex to the Convention which is in force for that Member.

4. The denunciation of this Convention or of any or all of the Annexes shall not affect the rights granted thereunder to a migrant or to the members of his family if he immigrated while the Convention or the relevant Annex was in force in respect of the territory where the question of the continued validity of these rights arises.

Article 18

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

Article 19

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 20

At the expiration of each period of ten years after the coming into force of this Convention, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall consider the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 21

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 17 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.

Article 22

1. The International Labour Conference may, at any session at which the matter is included in its agenda, adopt by a two-thirds majority a revised text of any one or more of the Annexes to this Convention.

2. Each Member for which this Convention is in force shall, within the period of one year, or, in exceptional circumstances, of eighteen months, from the closing of the session of the Conference, submit any such revised text to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

3. Any such revised text shall become effective for each Member for which this Convention is in force on communication by that Member to the Director-General of the International Labour Office of a declaration notifying its acceptance of the revised text.

4. As from the date of the adoption of the revised text of the Annex by the Conference, only the revised text shall be open to acceptance by Members.

Article 23

The English and French versions of the text of this Convention are equally authoritative.

ANNEX I—RECRUITMENT, PLACING AND CONDITIONS OF LABOUR OF MIGRANTS FOR
EMPLOYMENT RECRUITED OTHERWISE THAN UNDER GOVERNMENT-SPONSORED
ARRANGEMENTS FOR GROUP TRANSFER

Article 1.

This Annex applies to migrants for employment who are recruited otherwise than under Government-sponsored arrangements for group transfer.

Article 2

For the purpose of this Annex—

(a) the term “recruitment” means—

- (i) the engagement of a person in one territory on behalf of an employer in another territory, or
- (ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory, together with the making of any arrangements in connexion with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;

(b) the term “introduction” means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited within the meaning of paragraph (a) of this Article; and

(c) the term “placing” means any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced within the meaning of paragraph (b) of this Article.

Article 3

1. Each Member for which this Annex is in force, the laws and regulations of which permit the operations of recruitment, introduction and placing as defined in Article 2, shall regulate such of the said operations as are permitted by its laws and regulations in accordance with the provisions of this Article.

2. Subject to the provisions of the following paragraph, the right to engage in the operations of recruitment, introduction and placing shall be restricted to—

- (a) public employment offices or other public bodies of the territory in which the operations take place;
- (b) public bodies of a territory other than that in which the operations take place which are authorized to operate in that territory by agreement between the governments concerned;
- (c) any body established in accordance with the terms of an international instrument.

3. In so far as national laws and regulations or a bilateral arrangement permit, the operations of recruitment, introduction and placing may be undertaken by—

- (a) the prospective employer or a person in his service acting on his behalf, subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority;
- (b) a private agency, if given prior authorization so to do by the competent authority of the territory where the said operations are to take place, in such cases and under such conditions as may be prescribed by—
 - (i) the laws and regulations of that territory, or
 - (ii) agreement between the competent authority of the territory of emigration or any body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration.

4. The competent authority of the territory where the operations take place shall supervise the activities of bodies and persons to whom authorizations have been issued in pursuance of paragraph 3 (b), other than any body established in accordance with the terms of an international instrument, the position of which shall continue to be governed by the terms of the said instrument or by any agreement made between the body and the competent authority concerned.

5. Nothing in this Article shall be deemed to permit the acceptance of a migrant for employment for admission to the territory of any Member by any person or body other than the competent authority of the territory of immigration.

Article 4

Each Member for which this Annex is in force undertakes to ensure that the services rendered by its public employment service in connexion with the recruitment, introduction or placing of migrants for employment are rendered free.

Article 5

1. Each Member for which this Annex is in force which maintains a system of supervision of contracts of employment between an employer, or a person acting on his behalf, and a migrant for employment undertakes to require—

- (a) that a copy of the contract of employment shall be delivered to the migrant before departure or, if the governments concerned so agree, in a reception centre on arrival in the territory of immigration;
- (b) that the contract shall contain provisions indicating the conditions of work and particularly the remuneration offered to the migrant;
- (c) that the migrant shall receive in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, information concerning the general conditions of life and work applicable to him in the territory of immigration.

2. Where a copy of the contract is to be delivered to the migrant on arrival in the territory of immigration, he shall be informed in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, of the occupational category for which he is engaged and the other conditions of work, in particular the minimum wage which is guaranteed to him.

3. The competent authority shall ensure that the provisions of the preceding paragraphs are enforced and that appropriate penalties are applied in respect of violations thereof.

Article 6

The measures taken under Article 4 of the Convention shall, as appropriate, include—

- (a) the simplification of administrative formalities;
- (b) the provision of interpretation services;
- (c) any necessary assistance during an initial period in the settlement of the migrants and members of their families authorized to accompany or join them; and
- (d) the safeguarding of the welfare, during the journey and in particular on board ship, of migrants and members of their families authorized to accompany or join them.

Article 7

1. In cases where the number of migrants for employment going from the territory of one Member to that of another is sufficiently large, the competent authorities of the territories concerned shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connexion with the application of the provisions of this Annex.

2. Where the Members maintain a system of supervision over contracts of employment, such agreements shall indicate the methods by which the contractual obligations of the employers shall be enforced.

Article 8

Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties.

ANNEX II—RECRUITMENT, PLACING AND CONDITIONS OF LABOUR OF MIGRANTS FOR EMPLOYMENT RECRUITED UNDER GOVERNMENT-SPONSORED ARRANGEMENTS FOR GROUP TRANSFER

Article 1

This Annex applies to migrants for employment who are recruited under government-sponsored arrangements for group transfer.

Article 2

For the purpose of this Annex—

(a) the term "recruitment" means—

(i) the engagement of a person in one territory on behalf of an employer in another territory under a government-sponsored arrangement for group transfer, or

(ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory under a government-sponsored arrangement for group transfer,

together with the making of any arrangements in connexion with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;

(b) the term "introduction" means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited under a government-sponsored arrangement for group transfer within the meaning of subparagraph (a) of this paragraph; and

(c) the term "placing" means any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced under a government-sponsored arrangement for group transfer within the meaning of subparagraph (b) of this paragraph.

Article 3

1. Each Member for which this Annex is in force, the laws and regulations of which permit the operations of recruitment, introduction and placing as defined in Article 2, shall regulate such of the said operations as are permitted by its laws and regulations in accordance with the provisions of this Article.

2. Subject to the provisions of the following paragraph, the right to engage in the operations of recruitment, introduction and placing shall be restricted to—

(a) public employment offices or other public bodies of the territory in which the operations take place;

(b) public bodies of a territory other than that in which the operations take place which are authorized to operate in that territory by agreement between the governments concerned;

(c) any body established in accordance with the terms of an international instrument.

3. In so far as national laws and regulations or a bilateral arrangement permit, and subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority, the operations of recruitment, introduction and placing may be undertaken by—

- (a) the prospective employer or a person in his services acting on his behalf;
- (b) private agencies.

4. The right to engage in the operation of recruitment, introduction and placing shall be subject to the prior authorization of the competent authority of the territory where the said operations are to take place in such cases and under such conditions as may be prescribed by—

- (a) the laws and regulations of that territory, or
- (b) agreement between the competent authority of the territory of emigration or any body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration.

5. The competent authority of the territory where the operations take place shall, in accordance with any agreements made between the competent authorities concerned, supervise the activities of bodies and persons to whom authorizations have been issued in pursuance of the preceding paragraph, other than any body established in accordance with the terms of an international instrument, the position of which shall continue to be governed by the terms of the said instrument or by any agreement made between the body and the competent authority concerned.

6. Before authorizing the introduction of migrants for employment the competent authority of the territory of immigration shall ascertain whether there is not a sufficient number of persons already available capable of doing the work in question.

7. Nothing in this Article shall be deemed to permit the acceptance of a migrant for employment for admission to the territory of any Member by any person or body other than the competent authority of the territory of immigration.

Article 4

1. Each Member for which this Annex is in force undertakes to ensure that the services rendered by its public employment service in connexion with the recruitment, introduction or placing of migrants for employment are rendered free.

2. The administrative costs of recruitment, introduction and placing shall not be borne by the migrants.

Article 5

In the case of collective transport of migrants from one country to another necessitating passage in transit through a third country, the competent authority of the territory of transit shall take measures for expediting the passage, to avoid delays and administrative difficulties.

Article 6

1. Each Member for which this Annex is in force which maintains a system of supervision of contracts of employment between an employer, or a person acting on his behalf, and a migrant for employment undertakes to require—

- (a) that a copy of the contract of employment shall be delivered to the migrant before departure or, if the governments concerned so agree, in a reception centre on arrival in the territory of immigration;
- (b) that the contract shall contain provisions indicating the conditions of work and particularly the remuneration offered to the migrant;
- (c) that the migrant shall receive in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, information concerning the general conditions of life and work applicable to him in the territory of immigration.

2. Where a copy of the contract is to be delivered to the migrant on arrival in the territory of immigration, he shall be informed in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, of the occupational category for which he is engaged and the other conditions of work, in particular the minimum wage which is guaranteed to him.

3. The competent authority shall ensure that the provisions of the preceding paragraphs are enforced and that appropriate penalties are applied in respect of violations thereof.

Article 7

1. The measures taken under Article 4 of this Convention shall, as appropriate, include—

- (a) the simplification of administrative formalities;
- (b) the provision of interpretation services;
- (c) any necessary assistance, during an initial period in the settlement of the migrants and members of their families authorized to accompany or join them;
- (d) the safeguarding of the welfare, during the journey and in particular on board ship, of migrants and members of their families authorized to accompany or join them; and
- (e) permission for the liquidation and transfer of the property of migrants for employment admitted on a permanent basis.

Article 8

Appropriate measures shall be taken by the competent authority to assist migrants for employment, during an initial period, in regard to matters concerning their conditions of employment; where appropriate, such measures may be taken in co-operation with approved voluntary organizations.

Article 9

If a migrant for employment introduced into the territory of a Member in accordance with the provisions of Article 3 of this Annex fails, for a reason for which he is not responsible, to secure the employment for which he has been recruited or other suitable employment, the cost of his return and that of the members of his family who have been authorized to accompany or join him, including administrative fees, transport and maintenance charges to the final destination, and charges for the transport of household belongings, shall not fall upon the migrant.

Article 10

If the competent authority of the territory of immigration considers that the employment for which a migrant for employment was recruited under Article 3 of this Annex has been found to be unsuitable, it shall take appropriate measures to assist him in finding suitable employment which does not prejudice national workers and shall take such steps as will ensure his maintenance pending placing in such employment, or his return to the area of recruitment if the migrant is willing or agreed to such return at the time of his recruitment, or his resettlement elsewhere.

Article 11

If a migrant for employment who is a refugee or a displaced person and who has entered a territory of immigration in accordance with Article 3 of this Annex becomes redundant in any employment in that territory, the competent authority of that territory shall use its best endeavours to enable him to obtain suitable employment which does not prejudice national workers, and shall take such steps as will ensure his maintenance pending placing in suitable employment or his resettlement elsewhere.

Article 12

The competent authorities of the territories concerned shall enter into agreements for the purpose of regulating matters of common concern arising in connexion with the application of the provisions of this Annex.

2. Where the Members maintain a system of supervision over contracts of employment, such agreements shall indicate the methods by which the contractual obligations of the employer shall be enforced.

3. Such agreements shall provide, where appropriate, for co-operation between the competent authority of the territory of emigration of a body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration, in respect of the assistance to be given to migrants concerning their conditions of employment in virtue of the provisions of Article 8.

Article 13

Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties,

ANNEX III—IMPORTATION OF THE PERSONAL EFFECTS, TOOLS AND EQUIPMENT OF
MIGRANTS FOR EMPLOYMENT

Article 1.

1. Personal effects belonging to recruited migrants for employment and members of their families who have been authorized to accompany or join them shall be exempt from customs duties on arrival in the territory of immigration.

2. Portable hand-tools and portable equipment of the kind normally owned by workers for the carrying out of their particular trades belonging to recruited migrants for employment and members of their families who have been authorized to accompany or join them shall be exempt from customs duties on arrival in the territory of immigration if such tools and equipment can be shown at the time of importation to be in their actual ownership or possession, to have been in their possession and use for an appreciable time, and to be intended to be used by them in the course of their occupation.

Article 2

1. Personal effects belonging to migrants for employment and members of their families who have been authorized to accompany or join them shall be exempt from customs duties on the return of the said persons to their country of origin if such persons have retained the nationality of that country at the time of their return here.

2. Portable hand-tools and portable equipment of the kind normally owned by workers for the carrying out of their particular trades belonging to migrants for employment and members of their families who have been authorized to accompany or join them shall be exempt from customs duties on return of the said persons to their country of origin if such persons have retained the nationality of that country at the time of their return there and if such tools and equipment can be shown at the time of importation to be in their actual ownership or possession, to have been in their possession and use for an appreciable time, and to be intended to be used by them in the course of their occupation.