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REPUBLIC OF KENYA

Sessional Paper No. 15 of 1963/65

INTERNATIONAL LABOUR CONFERENCE

Proposed action by the Government of Kenya on certain instruments
adopted by the International Labour Conference.

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SESSIONAL PAPER No. 15 OF 1963/65—INTERNATIONAL LABOUR CONFERENCE

Under the Constitution of the International Labour Organization member states have a duty to bring before the appropriate authority in their country instruments adopted by the International Labour Conference, with a view to their ratification or other action. The appropriate authority in Kenya is the Kenya National Legislature, the House of Representatives and the Senate.

2. At the 48th Session of the International Labour Conference held in Geneva in June/July 1964, the Conference adopted three Instruments of Amendment to the Constitution of the International Labour Organization. Under the Constitution of the Organization such amendments do not take effect until ratified or accepted by two-thirds of the Members of the Organization, including five of the ten members represented on the Governing Body as members of Chief Industrial Importance. The ten members which are represented on the Governing Body as members of Chief Industrial Importance are, Canada, China, France, Federal Republic of Germany, India, Italy, Japan, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America.

3. The full texts of the Instruments of Amendment are given in the Appendix. This paper indicates the action the Government proposes to take on each Instrument.

INSTRUMENT OF AMENDMENT No. 1 (1964)

4. The purpose of this amendment is to bring up to date the provisions of the Constitution relating to the obligations of members responsible for the international relations of other territories. Such Members would be required to accept the provisions of International Labour Conventions "so far as practicable in respect of all territories for whose international relations they are responsible". Provision is made for territories which have self-governing powers in relation to the subject-matter of any Conventions and for territories as they acquire their independence and cease to be dependent.

5. The existing provisions on "non-metropolitan territories" and enabling Conventions to be accepted with modifications in their application to non-self-governing territories would cease to apply. The Government intends to register its ratification of this Instrument of Amendment.

INSTRUMENT OF AMENDMENT No. 2 (1964)

This amendment provides for the inclusion in the Constitution of the International Labour Organization of an article empowering the Conference to suspend from participation in its work any Member who has been found by the United Nations to be flagrantly and persistently pursuing by its legislation a declared policy of racial discrimination such as apartheid.

The Government intends to register its ratification of this Instrument of Amendment.

INSTRUMENT OF AMENDMENT No. 3 (1964)

This amendment provides for the inclusion in the Constitution of the International Labour Organization of a paragraph empowering the Conference to expel or suspend from membership any Member which has been expelled or suspended from membership of the United Nations.

The Government intends to register its ratification of this Instrument of Amendment.

INSTRUMENT OF AMENDMENT No. 1

(1) *Instrument for the Amendment of the Constitution of the International Labour Organization*

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-eighth Session on 17th June 1964, and having decided upon the substitution for article 35 of the Constitution of the International Labour Organization of the proposals referred to the Conference by the Governing Body at its One hundred and fifty-seventh Session, a question which is the ninth item on the agenda of the session, adopts this sixth day of July of the year one thousand nine hundred and sixty-four the following instrument for the amendment of the Constitution of the International Labour Organization, which may be cited as the Constitution of the International Labour Organization Instrument of Amendment (No. 1), 1964.

Article 1

As from the date of the coming into force of this Instrument of Amendment, article 19 of the Constitution of the International Labour Organization shall be amended by the addition of the following paragraph:—

“9. With a view to promoting the universal application of Conventions to all peoples, including those who have not yet attained a full measure of self-government, and without prejudice to the self-governing powers of any territory, Members ratifying Conventions shall accept their provisions so far as practicable in respect of all territories for whose international relations they are responsible.

(a) Where the subject-matter of the Convention is within the self-governing powers of any territory, the obligation of the Member responsible for the international relations of that territory shall be to bring the Convention to the notice of the government of the territory as soon as possible with a view to the enactment of legislation or other action by such government; if the government of the territory so agrees, the Member shall communicate to the Director-General of the International Labour Office a declaration accepting the obligations of the Convention on behalf of such territory.

(b) A declaration accepting the obligations of any Convention may be communicated to the Director-General of the International Labour Office—

(i) by two or more Members of the Organization in respect of any territory which is under their joint authority; or

(ii) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of such territory.

(c) Acceptance of the obligations of a Convention in virtue of subparagraph (a) or subparagraph (b) of this paragraph shall involve the acceptance on behalf of the territory concerned of the obligations stipulated by the terms of the Convention and the obligations under the Constitution of the Organization which apply to ratified Conventions.

(d) Each Member or international authority which has communicated a declaration in virtue of this paragraph may, in accordance with the provisions of the Convention relating to the denunciation thereof, communicate a further declaration terminating the acceptance of the obligations of the Convention on behalf of any territory specified in the declaration.

- (e) With a view to encouraging the universality of application envisaged above, the Member or Members or international authority concerned shall, as requested by the Governing Body, report to the Director-General of the International Labour Office the position of the law and practice of territories for which the Convention is not in force in regard to the matters dealt with in the Convention and the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the acceptance of the Convention.
- (f) This transitory paragraph shall cease to be applicable to the peoples of dependent territories as they become independent."

Article 2

As from the coming into force of the amendment to article 19 provided for in the preceding article, article 35 of the Constitution of the International Labour Organization shall cease to have effect.

Article 3

On the coming into force of this Instrument of Amendment, the Director-General of the International Labour Office shall cause an official text of the Constitution of the International Labour Organization as modified by the provisions of this Instrument to be prepared in two original copies, duly authenticated by his signature. One of these copies shall be deposited in the archives of the International Labour Office and the other shall be communicated to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations. The Director-General shall communicate a certified copy of the text to each of the Members of the International Labour Organization.

Article 4

Two copies of this Instrument of Amendment shall be authenticated by the signatures of the President of the Conference and of the Director-General of the International Labour Office. One of these copies shall be deposited in the archives of the International Labour Office and the other shall be communicated to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations. The Director-General shall communicate a certified copy of the Instrument to each of the Members of the International Labour Organization.

Article 5

1. The formal ratifications or acceptances of this Instrument of Amendment shall be communicated to the Director-General of the International Labour Office, who shall notify the Members of the Organization of the receipt thereof.

2. This Instrument of Amendment will come into force in accordance with the provisions of article 36 of the Constitution of the Organization.

3. On the coming into force of this Instrument, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organization and the Secretary-General of the United Nations.

INSTRUMENT OF AMENDMENT No. 2**(2) *Instrument for the amendment of the Constitution of the International Labour Organization***

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-eighth Session on 17th June 1964, and having decided upon the inclusion in the Constitution of the International Labour Organization of a provision empowering the Conference to suspend from participation in the International Labour Conference any Member which has been found by the United Nations to be flagrantly and persistently pursuing by its legislation a declared policy of racial discrimination such as apartheid, a question which is the twelfth item on the agenda of the session, adopts this ninth day of July of the year one thousand nine hundred and sixty-four the following instrument for the amendment of the Constitution of the International Labour Organization, which may be cited as the Constitution of the International Labour Organization Instrument of Amendment (No. 2), 1964.

Article 1

As from the date of the coming into force of this Instrument of Amendment, the Constitution of the International Labour Organization shall be amended by the insertion at the end of the Constitution of a new article in the following terms:—

“The General Conference of the International Labour Organization may, at any session in the agenda of which the subject has been included and by a vote concurred in by two-thirds of the delegates attending the session, including two-thirds of the Government delegates present and voting, suspend from participation in the International Labour Conference any Member of the International Labour Organization which has been found by the United Nations to be flagrantly and persistently pursuing by its legislation a declared policy of racial discrimination such as apartheid; such suspension shall not affect the obligations of the Member under the Constitution and Convention to which it is a party; it shall continue until the Conference, on the proposal of the Governing Body, finds by a vote concurred in by two-thirds of the delegates attending the session, including two-thirds of the Government delegates present and voting, that the Member has changed its policy.”

Article 2

On the coming into force of this Instrument of Amendment, the Director-General of the International Labour Office shall cause an official text of the Constitution of the International Labour Organization as modified by the provisions of this Instrument to be prepared in two original copies, duly authenticated by his signature. One of these copies shall be deposited in the archives of the International Labour Office and the other shall be communicated to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations. The Director-General shall communicate a certified copy of the text to each of the Members of the International Labour Organization.

Article 3

Two copies of this Instrument of Amendment shall be authenticated by the signature of the President of the Conference and of the Director-General of the International Labour Office. One of these copies shall be deposited in the archives of the International Labour Office and the other shall be communicated to

the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations. The Director-General shall communicate a certified copy of the Instrument to each of the Members of the International Labour Organization.

Article 4

1. The formal ratifications or acceptances of this Instrument of Amendment shall be communicated to the Director-General of the International Labour Office, who shall notify the Members of the Organization of the receipt thereof.

2. This Instrument of Amendment will come into force in accordance with the provisions of article 36 of the Constitution of the Organization.

3. On the coming into force of this Instrument, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organization and the Secretary-General of the United Nations.

INSTRUMENT OF AMENDMENT No. 3

(3) *Instrument for the amendment of the Constitution of the International Labour Organization*

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-eighth Session on 17th June 1964, and having decided upon the inclusion in the Constitution of the International Labour Organization of a provision empowering the Conference to expel or suspend from membership any Member which has been expelled or suspended from membership of the United Nations, a question which is the eleventh item on the agenda of the session, adopts this ninth day of July of the year one thousand nine hundred and sixty-four the following instrument for the amendment of the Constitution of the International Labour Organization, which may be cited as the Constitution of the International Labour Organization Instrument of Amendment (No. 3), 1964.

Article 1

As from the date of the coming into force of this Instrument of Amendment, article 1 of the Constitution of the International Labour Organization shall be amended by the insertion after paragraph 5 of the following new paragraph, the present paragraph 6 becoming paragraph 7:—

"6. The General Conference of the International Labour Organization may, at any session in the agenda of which the subject has been included and by a vote concurred in by two-thirds of the delegates attending the session, including two-thirds of the Government delegates present and voting, expel from membership of the International Labour Organization any Member which the United Nations has expelled therefrom or suspend from the exercise of the rights and privileges of membership of the International Labour Organization any Member which the United Nations has suspended from the exercise of the rights and privileges of membership; suspension shall not affect the continued validity of the obligations of the Member under the Constitution and Conventions to which it is a party."

Article 2

On the coming into force of this Instrument of Amendment, the Director-General of the International Labour Office shall cause an official text of the Constitution of the International Labour Organization as modified by the provisions of this Instrument to be prepared in two original copies, duly authenticated by his signature. One of these copies shall be deposited in the archives of the International Labour Office and the other shall be communicated to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations. The Director-General shall communicate a certified copy of the text to each of the Members of the International Labour Organization.

Article 3

Two copies of this Instrument of Amendment shall be authenticated by the signature of the President of the Conference and of the Director-General of the International Labour Office. One of these copies shall be deposited in the archives of the International Labour Office and the other shall be communicated to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations. The Director-General shall communicate a certified copy of the Instrument to each of the Members of the International Labour Organization.

Article 4

1. The formal ratifications or acceptances of this Instrument of Amendment shall be communicated to the Director-General of the International Labour Office, who shall notify the Members of the Organization of the receipt thereof.

2. This Instrument of Amendment will come into force in accordance with the provisions of article 36 of the Constitution of the Organization.

3. On the coming into force of this Instrument, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organization and the Secretary-General of the United Nations.