

Description: Convention concerning the Regulation of Certain Special Systems of Recruiting Workers (Note: Date of coming into force: 08:09:1939.)

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Place: Geneva
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The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Twentieth Session on 4 June 1936, and

Having decided upon the adoption of certain proposals with regard to the regulation of certain special systems of recruiting workers, which is the first item on the agenda of the Session, and

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

adopts this twentieth day of June of the year one thousand nine hundred and thirty-six the following Convention, which may be cited as the Recruiting of Indigenous Workers Convention, 1936:

Article 1

Each Member of the International Labour Organisation which ratifies this Convention undertakes to regulate in accordance with the following provisions the recruiting of indigenous workers in each of its territories in which such recruiting exists or may hereafter exist.

Article 2

For the purposes of this Convention--

- (a) the term recruiting includes all operations undertaken with the object of obtaining or supplying the labour of persons who do not spontaneously offer their services at the place of employment or at a public emigration or employment office or at an office conducted by an employers' organisation and supervised by the competent authority;
- (b) the term indigenous workers includes workers belonging to or assimilated to the indigenous populations of the dependent territories of Members of the Organisation and workers belonging to or assimilated to the dependent indigenous populations of the home territories of Members of the Organisation.

Article 3

Where the circumstances make the adoption of such a policy desirable, the following classes of recruiting operations may, except when undertaken by persons or associations engaged in professional recruiting, be exempted from the application of the Convention by the competent authority--

- (a) operations undertaken by or on behalf of employers who do not employ more than a prescribed limited number of workers;
- (b) operations undertaken within a prescribed limited radius from the place of employment; and
- (c) operations for the engagement of personal and domestic servants and of non-manual workers.

Article 4

Before approving for any area any scheme of economic development which is likely to involve the recruiting of labour, the competent authority shall take such measures as may be practicable and necessary--

- (a) to avoid the risk of pressure being brought to bear on the populations concerned by or on behalf of the employers in order to obtain the labour required;
- (b) to ensure that, as far as possible, the political and social organisation of the populations concerned and their powers of adjustment to the changed economic conditions will not be endangered by the demand for labour; and
- (c) to deal with any other possible untoward effects of such development on the populations concerned.

Article 5

1. Before granting permission to recruit labour in any area, the competent authority shall take into consideration the possible effects of the withdrawal of adult males on the social life of the population concerned, and in particular shall consider--

- (a) the density of the population, its tendency to increase or decrease, and the probable effect upon the birthrate of the withdrawal of adult males;
- (b) the possible effects of the withdrawal of adult males on the health, welfare and development of the population concerned, particularly in connection with the food supply;
- (c) the dangers to the family and morality arising from the withdrawal of adult males; and
- (d) the possible effects of the withdrawal of adult males on the social organisation of the population concerned.

2. Where the circumstances make the adoption of such a policy practicable and necessary, the competent authority shall, in order to safeguard the populations concerned against any untoward consequences of the withdrawal of adult males, fix the maximum number of adult males who may be recruited in any given social unit in such manner that the number of adult males remaining in the said unit does not fall below a prescribed percentage of the normal proportion of adult males to women and children.

Article 6

Non-adult persons shall not be recruited. Provided that the competent authority may permit non-adults above a prescribed age to be recruited with the consent of their parents for employment upon light work subject to prescribed safeguards for their welfare.

Article 7

1. The recruiting of the head of a family shall not be deemed to involve the recruiting of any member of his family.

2. Where the circumstances make the adoption of such a policy practicable and desirable, the competent authority shall encourage recruited workers to be accompanied by their families, more particularly in the case of workers recruited for agricultural or similar employment at a long distance from their homes and for periods exceeding a specified duration.

3. Except at the express request of the persons concerned, recruited workers shall not be separated from wives and minor children who have been authorised to accompany them to, and to remain with them at, the place of employment.

4. In default of agreement to the contrary before the departure of the worker from the place of recruiting, an authorisation to accompany a worker shall be deemed to be an authorisation to remain with him for the full duration of his term of service.

Article 8

Where the circumstances make the adoption of such a policy practicable and desirable, the competent authority may make it a condition of permitting recruiting that the recruited workers shall be grouped at the place of employment under suitable ethical conditions.

Article 9

Public officers shall not recruit for private undertakings either directly or indirectly, except when the recruited workers are to be employed on works of public utility for the execution of which private undertakings are acting as contractors for a public authority.

Article 10

Chiefs or other indigenous authorities shall not--

- (a) act as recruiting agents;
- (b) exercise pressure upon possible recruits; or
- (c) receive from any source whatsoever any special remuneration or other special inducement for assistance in recruiting.

Article 11

No person or association shall engage in professional recruiting unless the said person or association has been licensed by the competent authority and is recruiting workers for a public department or for one or more specific employers or organisations of employers.

Article 12

Employers, employers' agents, organisations of employers, organisations subsidised by employers, and the agents of organisations of employers and of organisations subsidised by employers, shall only engage in recruiting if licensed by the competent authority.

Article 13

1. Before issuing any licence for recruiting the competent authority shall--

- (a) satisfy itself that the applicant for a licence, if an individual, is a fit and proper person;
- (b) require the applicant for a licence, except when the said applicant is an employers' organisation or an organisation subsidised by employers, to furnish financial or other security for proper conduct as a licensee;
- (c) require the applicant for a licence, if an employer, to furnish financial or other security for the payment of wages due; and
- (d) satisfy itself that adequate provision has been made for safeguarding the health and welfare of the workers to be recruited.

2. Licensees shall keep, in such form as the competent authority may prescribe, records from which the regularity of every recruiting operation can be verified and every recruited worker can be identified.

3. A licensee who is the agent of another licensee shall wherever possible receive a fixed salary, and in any case in which he receives remuneration calculated at a rate per head of workers recruited such remuneration shall not exceed a maximum to be prescribed by the competent authority.

4. The validity of licences shall be limited to a fixed period not exceeding one year to be prescribed by the competent authority.

5. The renewal of licences shall be conditional upon the manner in which the licensee has respected the conditions subject to which the licence was issued.

6. The competent authority shall be entitled--

- (a) to withdraw any licence if the licensee has been guilty of any offence or misconduct unfitting him to conduct recruiting operations; and
- (b) to suspend any licence pending the result of any enquiry into the conduct of the licensee.

Article 14

1. No person shall assist a licensee in a subordinate capacity in the actual recruiting operations unless he has been approved by a public officer and has been furnished with a permit by the licensee.

2. Licensees shall be responsible for the proper conduct of such assistants.

Article 15

1. Where the circumstances make the adoption of such a policy necessary or desirable, the competent authority may exempt from the obligation to hold a licence worker-recruiters who--

- (a) are employed as workers by the undertaking for which they recruit other workers;
- (b) are formally commissioned in writing by the employer to recruit other workers; and
- (c) do not receive any remuneration or other advantage for recruiting.

2. Worker-recruiters shall not make advances of wages to recruits.

3. Worker-recruiters may recruit only within an area to be prescribed by the competent authority.

4. The operations of worker-recruiters shall be supervised in a manner to be prescribed by the competent authority.

Article 16

1. Recruited workers shall be brought before a public officer, who shall satisfy himself that the law and regulations concerning recruiting have been observed and, in particular, that the workers have not been subjected to illegal pressure or recruited by misrepresentation or mistake.

2. Recruited workers shall be brought before such an officer as near as may be convenient to the place of recruiting or, in the case of workers recruited in one territory for employment in a territory under a different administration, at latest at the place of departure from the territory of recruiting.

Article 17

Where the circumstances make the adoption of such a provision practicable and necessary, the competent authority shall require the issue to each recruited worker who is not engaged at or near the place of recruiting of a document in writing such as a memorandum of information, a work book or a provisional contract containing such particulars as the authority may prescribe, as for example particulars of the identity of the workers, the prospective conditions of employment, and any advances of wages made to the workers.

Article 18

1. Every recruited worker shall be medically examined.

2. Where the worker has been recruited for employment at a distance from the place of recruiting or has been recruited in one territory for employment in a territory under a different administration the medical examination shall take place as near as may be convenient to the place of recruiting or, in the case of workers recruited in one territory for employment in a territory under a different administration, at latest at the place of departure from the territory of recruiting.

3. The competent authority may empower public officers before whom workers are brought in pursuance of Article 16 to authorise the departure prior to medical examination of workers in whose case they are satisfied--

- (a) that it was and is impossible for the medical examination to take place near to the place of recruiting or at the place of departure;
- (b) that the worker is fit for the journey and the prospective employment; and
- (c) that the worker will be medically examined on arrival at the place of employment or as soon as possible thereafter.

4. The competent authority may, particularly when the journey of the recruited workers is of such duration and takes place under such conditions that the health of the workers is likely to be affected, require recruited workers to be examined both before departure and after arrival at the place of employment.

5. The competent authority shall ensure that all necessary measures are taken for the acclimatisation and adaptation of recruited workers and for their immunisation against disease.

Article 19

1. The recruiter or employer shall whenever possible provide transport to the place of employment for recruited workers.

2. The competent authority shall take all necessary measures to ensure--

- (a) that the vehicles or vessels used for the transport of workers are suitable for such transport, are in good sanitary condition and are not overcrowded;
- (b) that when it is necessary to break the journey for the night suitable accommodation is provided for the workers; and
- (c) that in the case of long journeys all necessary arrangements are made for medical assistance and for the welfare of the workers.

3. When recruited workers have to make long journeys on foot to the place of employment, the competent authority shall take all necessary measures to ensure--

- (a) that the length of the daily journey is compatible with the maintenance of the health and strength of the workers; and
- (b) that, where the extent of the movement of labour makes this necessary, rest camps or rest houses are provided at suitable points on main routes and are kept in proper sanitary condition and have the necessary facilities for medical attention.

4. When recruited workers have to make long journeys in groups to the place of employment, they shall be conveyed by a responsible person.

Article 20

1. The expenses of the journey of recruited workers to the place of employment, including all expenses incurred for their protection during the journey, shall be borne by the recruiter or employer.

2. The recruiter or employer shall furnish recruited workers with everything necessary for their welfare during the journey to the place of employment, including particularly, as local circumstances may require, adequate and suitable supplies of food, drinking water, fuel and cooking utensils, clothing and blankets.

3. This Article applies to workers recruited by worker-recruiters only to the extent to which its application is considered possible by the competent authority.

Article 21

Any recruited worker who--

- (a) becomes incapacitated by sickness or accident during the journey to the place of employment;
- (b) is found on medical examination to be unfit for employment;
- (c) is not engaged after recruiting for a reason for which he is not responsible; or
- (d) is found by the competent authority to have been recruited by misrepresentation or mistake;

shall be repatriated at the expense of the recruiter or employer.

Article 22

The competent authority shall limit the amount which may be paid to recruited workers in respect of advances of wages and shall regulate the conditions under which such advances may be made.

Article 23

Where the families of recruited workers have been authorised to accompany the workers to the place of employment the competent authority shall take all necessary measures for safeguarding their health and welfare during the journey and more particularly--

- (a) Articles 19 and 20 of this Convention shall apply to such families;
- (b) in the event of the worker being repatriated in virtue of Article 21, his family shall also be repatriated; and
- (c) in the event of the death of the worker during the journey to the place of employment, his family shall be repatriated.

Article 24

1. Before permitting the recruiting of workers for employment in a territory under a different administration, the competent authority of the territory of recruiting shall satisfy itself that all necessary measures have been taken for the protection of the recruited workers in accordance with the provisions of this Convention when the workers have travelled beyond its jurisdiction.

2. Where workers are recruited in one territory for employment in a territory under a different administration and the circumstances and amount of recruiting appear to the competent authorities concerned to necessitate such action, the said authorities shall enter into agreements defining the extent to which such recruiting is to be permitted and providing for co-operation between them in supervising the execution of the conditions of recruiting and employment.

3. The recruiting of workers in one territory for employment in a territory under a different administration shall be undertaken only under licence issued by the competent authority of the territory of recruiting. Provided that the said authority may accept as equivalent to a licence issued by it a licence issued by the competent authority of the territory of employment.

4. Where the circumstances and the amount of recruiting for employment in a territory under a different administration appear to the competent authority of the territory of recruiting to necessitate such action, the said authority shall provide that such recruiting may only be undertaken by organisations approved by it.

Article 25

1. In respect of the territories referred to in article 35 of the Constitution of the International Labour Organisation, each Member of the Organisation which ratifies this Convention shall append to its ratification a declaration stating--

- a) the territories to which it undertakes to apply the provisions of the Convention without modification;
- b) the territories to which it undertakes to apply the provisions of the Convention subject to modifications, together with details of the said modifications;
- c) the territories to which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
- d) the territories in respect of which it reserves its decision.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

Article 26

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

Article 27

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 28

As soon as the ratifications of two Members of the International Labour Organisation have been registered, the Director-General of the International Labour Office shall so notify all the Members of the International Labour Organisation. He shall likewise notify them of the registration of ratifications which may be communicated subsequently by other Members of the Organisation.

Article 29

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 30

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 31

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 29 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 32

The French and English texts of this Convention shall both be authentic.