

ILO CONVENTION (No. 86) CONCERNING THE MAXIMUM LENGTH OF
CONTRACTS OF EMPLOYMENT OF INDIGENOUS WORKERS

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 Thirtieth Session on 19 June 1947, and

HAVING DECIDED upon the adoption of certain proposals concerning the maximum
length of contracts of employment of indigenous workers, which is included in the third
item on the agenda of the Session, and

HAVING DETERMINED that these proposals shall take the form of an international
Convention,

ADOPTS this eleventh day of July of the year one thousand nine hundred and forty-
seven the following Convention, which may be cited as the Contracts of Employment
(Indigenous Workers) Convention, 1947:

Article 1

For the purposes of this Convention-

- (a) the term "worker" means an indigenous worker, that is to say a worker belonging to or assimilated to the indigenous population of a non-metropolitan territory;
- (b) the term " employer" includes, unless the contrary intention appears, any public authority, individual, company or association, whether non-indigenous or indigenous;
- (c) the term "regulations " means the law and/or regulations in force in the territory concerned; and
- (d) the term "contract" means, unless the contrary intention appears, a contract of employment by which a worker enters the service of an employer as a worker for remuneration in cash or in any other form whatsoever, but does not include contracts of apprenticeship made in accordance with special provisions relating to apprenticeship contained in the regulations.

Article 2

1. The competent authority may exclude from the application of this Convention-
 - (a) contracts by which a worker enters the service of an indigenous employer who does not employ more than a limited number of workers prescribed by the regulations or satisfy some other criterion prescribed thereby;

- (b) any contract under which the only or principal remuneration granted to the worker is the occupancy or use of land belonging to his employer.

2. The competent authority may, after consultation with the employers' and workers' organisations representative of the interests concerned, exclude from the application of this Convention contracts entered into between employers and literate workers whose freedom of choice in employment is satisfactorily safeguarded; such exclusion may apply to the whole of the workers in a territory, to the workers in any specified industry, to the workers in any specified undertaking, or to special groups of workers.

Article 3

1. The regulations shall prescribe the maximum period of service which may be stipulated or implied in any contract, whether written or oral.

2. The maximum period of service which may be stipulated or implied in any contract for employment not involving a long and expensive journey shall in no case exceed twelve months if the workers are not accompanied by their families or two years if the workers are accompanied by their families.

3. The maximum period of service which may be stipulated or implied in any contract for employment involving a long and expensive journey shall in no case exceed two years if the workers are not accompanied by their families or three years if the workers are accompanied by their families.

Article 4

1. When a contract made in one territory (hereinafter called the territory of origin) relates to employment in a territory under a different administration (hereinafter called the territory of employment), the maximum period of service which may be stipulated or implied therein shall not exceed either the maximum period prescribed by the regulations of the territory of origin or the maximum period prescribed by the regulations of the territory of employment.

2. The competent authorities of the territories of origin and of employment shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Convention.

Article 5

This Convention does not apply to contracts entered into before the coming into force of the Convention for the territory where the question of its applicability arises.

Article 6

1. In respect of the territories referred to in Article 35 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation Instrument of Amendment, 1946, other than the territories referred

to in paragraphs 4 and 5 of the said Article as so amended, each Member of the Organisation which ratifies this Convention shall append to its ratification, or communicate to the Director-General of the International Labour Office as soon as possible after ratification, a declaration stating-

- (a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification;
- (b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;
- (c) the territories in respect of 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 sub-paragraphs (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 sub-paragraphs (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 11, 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 7

1. Where the subject matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the Government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.

2. A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office-

- (a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or
- (b) 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 any such territory.

3. Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.

4. 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.

5. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 11, 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 8

In respect of each territory for which there is in force a declaration specifying modifications of the provisions of this Convention, the annual reports on the application of the Convention shall indicate the extent to which any progress has been made with a view to making it possible to renounce the right to have recourse to the said modifications.

Article 9

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.¹

Article 10

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.²

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

Article 11

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 12

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

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

Article 13

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 14

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 15

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 11 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 16

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

- ¹ Instrument of ratification registered for Australia 15 June 1973.
- ² The Convention entered into force generally 13 February 1953.
- ³ The Convention entered into force for Australia 15 June 1974.