

No. 639

INTERNATIONAL LABOUR ORGANISATION

Convention concerning the regulation of written contracts of employment of indigenous workers, adopted by the General Conference of the International Labour Organisation at its twenty-fifth session, Geneva, 27 June 1939, as modified by the Final Articles Revision Convention, 1946

English and French official texts communicated by the Director-General of the International Labour Office. The registration took place on 15 September 1949.

ORGANISATION INTERNATIONALE DU TRAVAIL

Convention concernant la réglementation des contrats de travail écrits des travailleurs indigènes, adoptée par la Conférence générale de l'Organisation internationale du Travail à sa vingt-cinquième session, Genève, 27 juin 1939, telle qu'elle a été modifiée par la Convention portant revision des articles finals, 1946

Textes officiels anglais et français communiqués par le Directeur général de l'Organisation internationale du Travail. L'enregistrement a eu lieu le 15 septembre 1949.

No. 689. CONVENTION¹ CONCERNING THE REGULATION OF WRITTEN CONTRACTS OF EMPLOYMENT OF INDIGENOUS WORKERS, AS MODIFIED BY THE FINAL ARTICLES REVISION CONVENTION, 1946²

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

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

Having determined that these proposals shall take the form of an inter-
national Convention,

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

Article 1

For the purpose of this Convention—

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

¹ For the date of entry into force of the Convention and the list of ratifications see Certified Statement on page 308.

² United Nations, *Treaty Series*, Volume 38, page 3.

Article 2

1. This Convention applies to contracts of employment by which a worker enters the service of an employer as a manual worker for remuneration in cash or in any other form whatsoever.

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

3. This Convention does not apply to contracts of apprenticeship made in accordance with special provisions relating to apprenticeship contained in the regulations.

4. The competent authority may, if necessary, exclude from the application of this Convention any contract of employment under which the only or principal remuneration granted to the worker is the occupancy or use of land belonging to his employer.

Article 3

1. When a contract to which this Convention applies—

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

2. The method by which the worker shall indicate his assent to the contract shall be prescribed by the regulations.

3. If a contract which is required by paragraph 1 of this Article to be made in writing has not been made in writing it shall not be enforceable except during the maximum period permissible for contracts not made in writing, but each of the parties shall be entitled to have it drawn up in writing at any time prior to the expiry of the period for which it was made.

4. If the omission to make the contract in writing was due to the wilful act or the negligence of the employer, the worker shall be entitled to apply to the competent authority for the cancellation of the contract and, in appropriate cases, to sue for damages.

Article 4

1. No contract shall be deemed to be binding on the family or dependants of the worker unless it contains an express provision to that effect.

2. The employer shall be responsible for the performance of any contract made by any person acting on his behalf.

Article 5

1. Every contract shall contain all such particulars as may be necessary in conjunction with the provisions of the regulations to define the rights and obligations of the parties.

2. The particulars to be contained in the contract shall in all cases include—

- (a) the name of the employer or group of employers and where practicable of the undertaking and of the place of employment;
- (b) the name of the worker, the place of engagement and where practicable the place of origin of the worker, and any other particulars necessary for his identification;
- (c) the nature of the employment;
- (d) the duration of the employment and the method of calculating this duration;
- (e) the rate of wages and method of calculation thereof, the manner and periodicity of payment of wages, the advances of wages, if any, and the manner of repayment of any such advances;
- (f) the conditions of repatriation; and
- (g) any special conditions of the contract.

Article 6

1. Every contract shall be presented for attestation to a public officer duly accredited for the purpose.

2. Before attesting any contract the public officer shall—

- (a) ascertain that the worker has freely consented to the contract and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake; and
- (b) satisfy himself that—
 - (i) the contract is in due legal form;
 - (ii) the terms of the contract are in accordance with the requirements of the regulations;

- (iii) the worker has fully understood the terms of the contract before signing it or otherwise indicating his assent;
- (iv) the provisions of the regulations relating to medical examination have been complied with; and
- (v) the worker declares himself not bound by any previous engagement.

8. A contract which the public officer has refused to attest shall have no further validity.

4. A contract which has not been presented to the public officer for attestation shall not be enforceable except during the maximum period permissible for contracts not made in writing, but each of the parties shall be entitled to have it presented for attestation at any time prior to the expiry of the period for which it was made.

5. If the omission to present the contract for attestation was due to the wilful act or the negligence of the employer, the worker shall be entitled to apply to the competent authority for the cancellation of the contract and, in appropriate cases, to sue for damages.

6. Every contract shall be registered by the competent authority or a copy thereof shall be deposited with the said authority.

7. The competent authority shall by the issue to the worker of a copy of the contract, of a work-book, or of an equivalent document or token, or in such other manner as it may deem appropriate, take such measures as may be necessary to enable the worker—

- (a) to prove the existence and terms of the contract; and
- (b) to verify at any time the terms of the contract.

Article 7

1. Every worker who enters into a contract shall be medically examined.

2. As a general rule the worker shall be medically examined and a medical certificate issued before the attestation of the contract.

3. Where it has not been possible for the worker to be medically examined before the attestation of the contract, the public officer who attests the contract shall endorse it to this effect and the worker shall be examined at the earliest possible opportunity.

4. The competent authority may exempt from the requirement of medical examination workers entering into contracts for—

- (a) employment in agricultural undertakings not employing more than a limited number of workers prescribed by the regulations;