

**LegCo Panel on Manpower
Special Meeting on 12 March 2003**

Review of policy on foreign domestic helpers

Purpose

This paper provides information requested by members in relation to the review of the policy on foreign domestic helpers (FDHs).

Employees Retraining Ordinance (Cap 423) (ERO)

2. The ERO was introduced in 1992 to provide for a statutory fund to be financed by the Employees Retraining Levy imposed on employers of imported employees under a labour importation scheme. The term “employer” in the ERO has the same meaning as in section 2(1) of the Employment Ordinance, which defines an employer as “any person who has entered into a contract of employment to employ any other person as an employee and the duly authorized agent, manager or factor of such first mentioned person.” There is no distinction between imported employees employed by businesses or domestic households. In moving the Employees Retraining Bill on 24 June 1992, the then Secretary for Education and Manpower made reference to the need to provide retraining course designed to assist those workers who were displaced as a result of the economic restructuring process to find alternative employment. The application of the levy under the ERO to FDH employers does not require the express approval of the Legislative Council under Article 73(3) of the Basic Law. The Legislative Council, when enacting the ERO, specified the amount of the levy and the purposes for which it may be collected. The statutory levy may only be paid into the Employees Retraining Fund under the ERO and used for the purposes of the Fund. It may not be paid out for any other purpose.

Immigration Department’s resources requirement

3. The charging of levy will start on 1 October 2003 and it could be paid in four instalments. The Immigration Department estimates that an annual

expenditure of \$7.6 million in terms of NAMS and \$14.6 million in terms of staff cost will be required for handling the levy and other relevant requirements arising from the ERO when importation of foreign domestic helpers is made a scheme under the ERO. This is only a rough estimate of the maximum amount of additional resources required by the Immigration Department as we have yet to work out the detailed implementation and collection arrangements. We would seek to work out a cost-effective and user-friendly levy collection mechanism and visa processing procedures, so as to maximize convenience to users and minimize the amount of additional resources required.

Current arrangement for importation of FDHs

4. Currently, the Director of Immigration exercises his power under the Immigration Ordinance (Cap. 115) to examine individual visa application for employment as domestic helpers in Hong Kong. There are some common criteria in examining the applications e.g. standard contract to be used, observation of the minimum allowable wage, experience of the applicant in domestic chores, provision of suitable and furnished accommodation by the employer and the financial capability of the employer etc.

Compliance with international obligations and the Basic Law

5. In drawing up the levy proposal, we have borne in mind the international obligations we have entered into, such as the International Labour Conventions (ILC) and other international treaties on human rights, and the Basic Law.

6. We have examined the Basic Law, Hong Kong Bill of Rights (HKBOR) and the International Covenant on Civil and Political Rights (ICCPR), a copy of which is at Annex A.

7. Specifically, Article 25 of the Basic Law provides that “all Hong Kong residents shall be equal before the law”. Such equality provision is also found in Article 22 of the HKBOR, and Article 26 of the ICCPR, which states that:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

In short, the Basic Law, the HKBOR and the ICCPR guarantee “the right to equality before the law” and “the right to equal protection of the law without any discrimination”.

8. The levy on employers of FDHs complies with the right to equality and equal protection. There is no inequality of treatment and the levy does not raise any issue of discrimination at all. The levy is charged on all persons in Hong Kong who wish to obtain permission to employ FDH, irrespective of any specified status, including race, colour, sex or any other status. And there are good reasons for the proposal :-

- (a) the imposition of a levy on employers for retraining purpose has already been implemented under the ERO in respect of imported employees under labour importation schemes. The levy on FDH employers seeks to achieve the same objective through a similar scheme;
- (b) the levy of \$400 is specified under section 14 and Schedule 3 of the ERO. A levy of \$400 per month on FDH employers is the same as that imposed on employers of employees imported under the General Labour Importation Scheme, the Special Labour Importation Scheme for the New Airport and Related Projects and the Supplementary Labour Scheme, and the amount has remained unchanged since the introduction of the ERO in 1992. It is reasonable to impose the same amount of levy on employers of FDHs; and
- (c) the funds collected will be used for the training and retraining of local employees, which is paramount to the employment situation and thus

the social stability of Hong Kong, especially at a time of economic restructuring and economic downturn.

9. The proposal does not constitute direct or indirect discrimination under the HKBOR, the Basic Law or the Sex Discrimination Ordinance, Cap 480, against the FDHs as the requirement to pay the levy is imposed on the employers only and not on the employees.

10. As regards the International Labour Conventions, the Migration for Employment Convention (Revised) 1949 (ILC 97) of the International Labour Organization, which is of relevance to FDHs, applies to Hong Kong. A copy of the Convention is at Annex B. The levy is to be imposed on employers of FDHs, not the FDHs themselves. As stated above, the imposition of a levy on FDH employers for training and retraining the local workforce does not give rise to any discrimination whatsoever. Nor is it treating FDHs less favourably than local domestic helpers because they are not directly comparable. There are minimum wage protection and specified benefits for a FDH which are not available to local domestic helpers. For example, local domestic helpers are not entitled through the standard employment contract to reasonable accommodation, provision of medical treatment and passages, etc.

11. To sum up, the imposition of the Employees Retraining Levy on employers of FDH complies fully with the Basic Law, our international obligations and local legislation.

Economic Development and Labour Bureau (Labour Branch)

March 2003

**INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS**

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant. General comment on its implementation

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.
3.
 - (a) No one shall be required to perform forced or compulsory labour;
 - (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
 - (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order

his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- (g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties

and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

- (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;
- (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
- (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity

with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

- (d) The Committee shall hold closed meetings when examining communications under this article;
- (e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;
- (f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
- (g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;
- (h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:
 - (i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
 - (ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;
- (b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.
2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.
3. The Commission shall elect its own Chairman and adopt its own rules of procedure.
4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.
5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.
6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.
7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:
 - (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the

matter;

- (b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;
- (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;
- (d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with

general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-

General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

- (a) Signatures, ratifications and accessions under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

* * * * *

Application of the Covenant to Hong Kong

In 1976, the Government of the United Kingdom ratified the International Covenant on Civil and Political Rights with certain reservations and declarations, and extended the Covenant to 10 British dependent territories including Hong Kong. The reservations and declarations applicable to Hong Kong are as follows.

On signing the Covenant the Government of the United Kingdom made the following declaration:

“First, the Government of the United Kingdom declare their understanding that, by virtue of Article 103 of the Charter of the United Nations, in the event of any conflict between their obligations under Article 1 of the Covenant and their obligations under the Charter (in particular, under Articles 1, 2 and 73 thereof) their obligations under the Charter shall prevail.”

On depositing their instrument of ratification of the Covenant the Government of the United Kingdom made the following reservations and declarations:

“Firstly the Government of the United Kingdom maintain their declaration in respect of Article 1 made at the time of signature of the Covenant.”

“The Government of the United Kingdom reserve the right to apply to members of and persons serving with the armed forces of the Crown and to persons lawfully detained in penal establishments of whatever character such laws and procedures as they may from time to time deem to be necessary for the preservation of service and custodial discipline and their acceptance of the provisions of the Covenant is subject to such restrictions as may for these purposes from time to time be authorized by law.”

“Where at any time there is a lack of suitable prison facilities or where the mixing of adults and juveniles is deemed to be mutually beneficial, the Government of the United Kingdom reserve the right not to apply Article 10.2(b) and 10.3 so far as those provisions require juveniles who are detained to be accommodated separately from adults, ...”

“The Government of the United Kingdom reserve the right to interpret the provisions of Article 12.1 relating to the territory of a State as applying separately to each of the territories comprising the United Kingdom and its dependencies.”

“The Government of the United Kingdom reserve the right to continue to apply such immigration legislation governing entry into, stay in and departure from the United Kingdom as they may deem necessary from time to time and, accordingly, their acceptance of Article 12.4 and of the other provisions of the Covenant is subject to the provisions of any such legislation as regards persons not at the time having the right under the law of the United Kingdom to enter and remain in the United Kingdom. The United Kingdom also reserves a similar right in regard to each of its dependent territories.”

“The Government of the United Kingdom reserve the right not to apply Article 13 in Hong Kong in so far as it confers a right of review of a decision to deport and alien and a right to be represented for this purpose before the competent authority.”

“The Government of the United Kingdom interpret Article 20 consistently with the rights conferred by Articles 19 and 21 of the Covenant and having legislated in matters of practical concern in the interests of public order (ordre public) reserve the right not to introduce any further legislation. The United Kingdom also reserve a similar right in regard to each of its dependent territories.”

“The Government of the United Kingdom reserve the right to enact such nationality legislation as they may deem necessary from time to time to reserve the acquisition and possession of citizenship under such legislation to those having sufficient connection with the United Kingdom or any of its dependent territories and accordingly their acceptance of Article 24.3 and of the other provisions of the Covenant is subject to the provisions of any such legislation.”

“The Government of the United Kingdom reserve the right not to apply sub-paragraph (b) of Article 25 in so far as it may require the establishment of an elected Executive or Legislative Council in Hong Kong ...”.

Declaration under Article 41

dated 17 May 1976

“The Government of the United Kingdom declares under Article 41 of this Covenant that it recognizes the competence of the Human Rights Committee to receive and consider communications submitted by another State Party, provided that such other State Party has, not less than twelve months prior to the submission by it of a communication relating to the United Kingdom, made a declaration under Article 41 recognizing the competence of the Committee to receive and consider communications relating to itself.”

C97 Migration for Employment Convention (Revised), 1949

Convention concerning Migration for Employment (Revised 1949) (Note: Date of coming into force: 22:01:1952.)

Convention:C097

Place:Geneva

Session of the Conference:32

Date of adoption:01:07:1949

Subject classification: Migrant Workers

See the ratifications for this Convention

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 Thirty-second Session on 8 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 these proposals must take the form of an international Convention,

adopts the 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 Organisation 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 authorised 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 Organisation.

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 authorised to accompany or join him shall not be returned to their territory of origin or the territory from which they 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 agreements for the purpose of regulating matters of common concern arising in connection 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 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 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 Organisation shall indicate --

- a) the territories in respect of which the Member concerned 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 pending further consideration of the position.

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 at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (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 paragraph 4 or 5 of article 35 of the Constitution of the International Labour Organisation 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.

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 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 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 should 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 1400 of 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 Organisation of the registration of all ratifications 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 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 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 examine 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

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 connection 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 1400 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 authorised 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 authorisation 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 authorisations 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 connection 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 authorised 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 authorised 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 connection 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

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 connection 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 authorised 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 service acting on his behalf; (b) private agencies.

4. The right to engage in the operations of recruitment, introduction and placing shall be subject to the prior authorisation 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 authorisations 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 authorising 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 connection 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 authorised 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 authorised 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 organisations.

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 authorised 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

1. The competent authorities of the territories concerned shall enter into agreements for the purpose of regulating matters of common concern arising in connection 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 or 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 provision f7c s of Article 8.

Article 13

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

ANNEX

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 authorised 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 authorised 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 authorised 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 there.

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 authorised 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.

Cross references

Revised: C066 This Convention revises the Migration for Employment Convention, 1939

Constitution: 19:article 19 of the Constitution of the International Labour Organisation

Constitution: 35:article 35 of the Constitution of the International Labour Organisation

Supplemented: C143 complemented by Migration for Employment Recommendation, 1949