

No. 640

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**INTERNATIONAL LABOUR ORGANISATION**

**Convention concerning penal sanctions for breaches of contracts of employment by 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.*

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**ORGANISATION INTERNATIONALE DU TRAVAIL**

**Convention concernant les sanctions pénales pour manquements au contrat de travail, de la part 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 révision 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. 640. CONVENTION<sup>1</sup> CONCERNING PENAL SANCTIONS FOR BREACHES OF CONTRACTS OF EMPLOYMENT BY INDIGENOUS WORKERS, AS MODIFIED BY THE FINAL ARTICLES REVISION CONVENTION, 1946<sup>2</sup>

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 progressive abolition of penal sanctions for breaches of contracts of employment by indigenous workers, which is included in the second item on the agenda of the Session, and

Having determined that these proposals shall take the form of an international 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 Penal Sanctions (Indigenous Workers) Convention, 1939 :

*Article 1*

1. This Convention applies to all contracts by which 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, enters the service of any public authority, individual, company or association, whether non-indigenous or indigenous, for remuneration in cash or in any other form whatsoever.

2. For the purpose of this Convention the term "breach of contract" means—

- (a) any refusal or failure of the worker to commence or perform the service stipulated in the contract;
- (b) any neglect of duty or lack of diligence on the part of the worker;
- (c) the absence of the worker without permission or valid reason; and
- (d) the desertion of the worker.

<sup>1</sup> For the date of entry into force of the Convention and the list of ratifications see Certified Statement on page 320.

<sup>2</sup> United Nations, *Treaty Series*, Volume 38, page 3.

*Article 2*

1. All penal sanctions for any breach of contract to which this Convention applies shall be abolished progressively and as soon as possible.

2. All penal sanctions for any such breach by a non-adult person whose apparent age is less than a minimum age to be prescribed by law or regulations shall be abolished immediately.

*Article 3*

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

*Article 4*

1. In respect of the territories referred to in Article 85 of the Constitution of the International Labour Organisation, each Member of the Organisation which ratifies this Convention shall append to its ratification a declaration stating—

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

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

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

*Article 5*

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 two Members of the Organisation have registered with the Director-General ratifications to which are appended, in accordance with Article 4 of this

Convention, declarations indicating territories to which they undertake to apply the provisions of the Convention.

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

#### *Article 6*

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

#### *Article 7*

1. The Director-General of the International Labour Office shall notify all the Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation and of declarations communicated to him in accordance with the provisions of Article 4 of this Convention.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him which fulfils the condition stated in Article 5, paragraph 2 of this Convention, 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 8*

At the expiration of each period of five years after the coming into force of this Convention the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall consider the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

*Article 9*

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 6 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 10*

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

The foregoing is the authentic text of the Penal Sanctions (Indigenous Workers) Convention, 1939, as modified by the Final Articles Revision Convention, 1946.

The original text of the Convention was authenticated on 8 August 1939, by the signatures of Dr. E. Schulthess, President of the Conference, and E. J. Phelan, Acting Director of the International Labour Office.

The Convention had not come into force on 1 January 1947.

IN FAITH WHEREOF I have, in pursuance of the provisions of Article 6 of the Final Articles Revision Convention, 1946, authenticated with my signature this thirty-first day of August 1948 two original copies of the text of the Convention as modified.

Edward PHELAN  
Director-General  
of the International Labour Office

## CERTIFIED STATEMENT

This is to certify that the Penal Sanctions (Indigenous Workers) Convention, 1939, adopted by the International Labour Conference on 27 June 1939 at its Twenty-fifth session, and which entered into force on 8 July 1948, has to date been ratified by the following countries and that these ratifications were duly registered on the dates indicated <sup>1</sup>:

<i>Country</i>	<i>Date of registration of ratification</i>
New Zealand .....	8.7.1947
United Kingdom .....	24.8.1948

Geneva, 10 August 1949.

For the Director-General

C. W. JENKS  
*Legal Adviser*

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<sup>1</sup> These States are Parties to the Final Articles Revision Convention, 1946.