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92nd Session 2004

Report VII (1)

Withdrawal of sixteen Recommendations

Seventh item on the agenda

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INTRODUCTION

1. At its 283rd Session (March 2002), the Governing Body of the International Labour Office decided, in accordance with article 12bis of its Standing Orders, to place on the agenda of the 92nd Session (2004) of the International Labour Conference an item relating to the withdrawal of 16 Recommendations.¹ These Recommendations concern the following subjects: *forced labour* (1): the Forced Labour (Regulation) Recommendation, 1930 (No. 36); *hours of work* (1): the Weekly Rest (Commerce) Recommendation, 1921 (No. 18); *occupational safety and health* (1): the Power-driven Machinery Recommendation, 1929 (No. 32); *welfare facilities, housing and leisure* (2): the Living-in Conditions (Agriculture) Recommendation, 1921 (No. 16), and the Utilisation of Spare Time Recommendation, 1924 (No. 21); *social security* (1): the Invalidity, Old-Age and Survivors' Insurance Recommendation, 1933 (No. 43); *maternity protection* (1): the Maternity Protection (Agriculture) Recommendation, 1921 (No. 12); *protection of children and young persons* (1): the Minimum Age (Coal Mines) Recommendation, 1953 (No. 96); *migrant workers* (2): the Reciprocity of Treatment Recommendation, 1919 (No. 2), and Migration (Protection of Females at Sea) Recommendation, 1926 (No. 26); *indigenous workers* (2): the Elimination of Recruiting Recommendation, 1936 (No. 46), and the Contracts of Employment (Indigenous Workers) Recommendation, 1939 (No. 58); *workers in non-metropolitan territories* (2): the Social Policy in Dependent Territories Recommendation, 1944 (No. 70), and the Social Policy in Dependent Territories (Supplementary Provisions) Recommendation, 1945 (No. 74); *dockworkers* (2): the Protection against Accidents (Dockers) Reciprocity Recommendation, 1929 (No. 33), and the Protection against Accidents (Dockers) Consultation of Organisations Recommendation, 1929 (No. 34).

2. In order to be able to abrogate or withdraw obsolete international labour Conventions or Recommendations, the International Labour Conference at its 85th Session (June 1997) adopted amendments to the Constitution of the International Labour Organization (addition of a paragraph 9 to article 19 of the Constitution),² and to the Standing Orders of the Conference (amendment of article 11 and addition of an article 45bis of the Standing Orders). A Convention or Recommendation is considered obsolete "if [it] appears that it has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization".³ The procedure for abrogation applies to Conventions which are in force. The procedure for withdrawal applies to Conventions which are not in force and to Recommendations. As the Conference has noted,⁴ abrogation and withdrawal are the subject of the same proce-

¹ Document GB.283/2/2.

² This provision is not yet in force.

³ Paragraph 9 of article 19.

⁴ ILC, 85th Session 1997, *Provisional Record* No. 10, para. 10.

dural guarantees. The only difference is that the Conference can, on the basis of its Standing Orders, withdraw an instrument before the entry into force of the constitutional amendment.⁵ The matter being examined here is the withdrawal of 16 Recommendations under article 11 and article 45bis of the Standing Orders of the Conference.

3. The report and the questionnaire below are communicated to governments pursuant to article 45bis of the Standing Orders of the Conference. The purpose of this report and its questionnaire is to enable the Conference to have the necessary elements to make a determination as to whether each Recommendation, seen as a whole, is obsolete. The procedure provided for is a simple discussion. This item is included in the agenda of the 92nd Session (2004) of the International Labour Conference.

⁵ At its 88th and 90th Sessions (2000 and 2002), the Conference proceeded with the withdrawal of five obsolete Conventions and 20 obsolete Recommendations, respectively (ILO: *Withdrawal of the Hours of Work (Coal Mines) Convention, 1931; the Hours of Work (Coal Mines) Convention (revised), 1935; the Reduction of Hours of Work (Public Works) Convention, 1936; the Reduction of Hours of Work (Textiles) Convention, 1937; and the Migration for Employment Convention, 1939*, Reports VII(1) and VII(2), International Labour Conference, 88th Session, 2000 (Geneva, ILO, 1999 and 2000); *Withdrawal of 20 Recommendations*, Reports VII(1) and VII(2), International Labour Conference, 90th Session, 2002 (Geneva, ILO, 2001 and 2002)).

EXAMINATION OF RECOMMENDATIONS

4. The Recommendations in question were adopted between 1919 and 1953. They were examined by the Working Party on Policy regarding the Revision of Standards of the Governing Body Committee on Legal Issues and International Labour Standards (LILS Committee) at the 277th⁶ and 279th⁷ Sessions of the Governing Body (March and November 2000). In accordance with the recommendations of the Working Party, which were approved by the LILS Committee, the Governing Body decided to propose the withdrawal of these Recommendations at the International Labour Conference.⁸ The withdrawal of these instruments would put an end to their legal effects vis-à-vis the Organization and contribute to rationalizing the body of international labour standards.

5. The reasons why the Governing Body decided to consider these Recommendations obsolete and to place their formal withdrawal on the agenda of the Conference are given below.

FORCED LABOUR

Forced Labour (Regulation) Recommendation, 1930 (No. 36)

6. Recommendation No. 36 is linked to the Forced Labour Convention, 1930 (No. 29). This instrument was intended to lay down additional rules to be observed when recourse was had to forced labour during a transitional period, as envisaged by Article 1, paragraph 2, of Convention No. 29, pending its complete abolition. During the examination of this Convention by the Working Party on Policy regarding the Revision of Standards, it was recalled that in the great majority of cases, the transitional period had expired and that, moreover, the Abolition of Forced Labour Convention, 1957 (No. 105), required the immediate abolition of all forms of forced labour within its scope.⁹ Recommendation No. 36, which was intended only to supplement Article 1, paragraph 2, of the Convention, was therefore considered by the Governing Body to be no longer relevant and hence obsolete.

HOURS OF WORK

Weekly Rest (Commerce) Recommendation, 1921 (No. 18)

7. Recommendation No. 18, which was adopted together with the Weekly Rest (Industry) Convention, 1921 (No. 14), refers to commercial establishments. Its main

⁶ Document GB.277/LILS/WP/PRS/4: Recommendations Nos. 2, 16, 21, 26, 32 and 43.

⁷ Document GB.279/LILS/WP/PRS/4: Recommendations Nos. 12, 18, 33, 34, 36, 46, 58, 70, 74 and 96.

⁸ Documents GB.277/11/2 and GB.279/11/2.

⁹ Document GB.279/LILS/WP/PRS/4, para. I.1.

purpose is to provide for a weekly rest period of at least 24 consecutive hours. Recommendation No. 18 lost its relevance after the adoption of the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106), which provides for the same weekly rest period, and the Weekly Rest (Commerce and Offices) Recommendation, 1957 (No. 103), which recommends a rest period of at least 36 hours, if possible taken consecutively. Recommendation No. 18 was therefore considered by the Governing Body to be obsolete.

OCCUPATIONAL SAFETY AND HEALTH

Power-driven Machinery Recommendation, 1929 (No. 32)

8. Recommendation No. 32 is autonomous, that is, it is not linked to a Convention. It merely recommends adopting the principle that it should be prohibited by law to supply or install any machine intended to be driven by mechanical power unless it is furnished with the safety appliances required by law. This Recommendation lost its relevance following the adoption of the Guarding of Machinery Convention, 1963 (No. 119), and Recommendation, 1963 (No. 118),¹⁰ which are more extensive and cover all aspects of the matter (manufacture, sale, hire, transfer, exhibition and use). The Governing Body therefore considered that Recommendation No. 32 was obsolete.

WELFARE FACILITIES, HOUSING AND LEISURE

Living-in Conditions (Agriculture) Recommendation, 1921 (No. 16)

9. Recommendation No. 16 is autonomous. It is confined to laying down basic regulations governing living-in conditions for agricultural workers. The Workers' Housing Recommendation, 1961 (No. 115), now contains more comprehensive and up-to-date standards in this area. The latter Recommendation applies to all workers and contains in particular general principles concerning objectives of national policy, the responsibility of public authorities, housing provided by employers and financing. As Recommendation No. 16 is no longer relevant, the Governing Body considered it obsolete.

Utilisation of Spare Time Recommendation, 1924 (No. 21)

10. Recommendation No. 21 is autonomous. This Recommendation, which sets out, according to the Preamble, to "lay down the principles and methods which at the present time seem generally best adapted to secure the best use of periods of spare time" is based on an authoritarian approach which is no longer appropriate in an area

¹⁰ The Governing Body also decided that Convention No. 119 and Recommendation No. 118 should themselves be revised. The question of the revision of these two instruments will be examined by the Conference in 2003 in the context of the general discussion, based on an integrated approach, on ILO standards-related activities in the area of occupational safety and health.

which is, by definition, free time. Standards based on a more up-to-date approach have since been adopted on the subjects covered by this instrument: as regards means of recreation and transport, the Welfare Facilities Recommendation, 1956 (No. 102), and with respect to housing, the Workers' Housing Recommendation, 1961 (No. 115). Recommendation No. 21 is thus no longer relevant and is considered obsolete by the Governing Body.

SOCIAL SECURITY

Invalidity, Old-Age and Survivors' Insurance Recommendation, 1933 (No. 43)

11. Recommendation No. 43 is linked to the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35), the Old-Age Insurance (Agriculture) Convention, 1933 (No. 36), the Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37), the Invalidity Insurance (Agriculture) Convention, 1933 (No. 38), the Survivors' Insurance (Industry, etc.) Convention, 1933 (No. 39), and the Survivors' Insurance (Agriculture) Convention, 1933 (No. 40). These six Conventions have been revised by the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), supplemented by Recommendation No. 131 on the same subject. These conditions were considered as outdated and shelved by decision of the Governing Body.¹¹ Consequently, Recommendation No. 43 itself is no longer relevant and the Governing Body considered that it is obsolete.

MATERNITY PROTECTION

Maternity Protection (Agriculture) Recommendation, 1921 (No. 12)

12. Recommendation No. 12 is autonomous. It provides for maternity protection for women employed in agriculture, similar to the protection provided for women employed in industry and commerce by the Maternity Protection Convention, 1919 (No. 3). That Convention was revised by the Maternity Protection Convention (Revised), 1952 (No. 103), whose scope is extended to include women employed in agricultural occupations. Convention No. 103 and the Maternity Protection Recommendation, 1952 (No. 95), which supplements it, were in turn revised by the Maternity Protection Convention, 2000 (No. 183), which applies to all employed women, including those in atypical forms of dependent work, and the Maternity Protection Recommendation, 2000 (No. 191), respectively. Recommendation No. 12 has lost its relevance following the adoption of more detailed standards on the same subject. The Governing Body therefore considered it obsolete.

¹¹ Documents GB.265/LILS/WP/PRS/1 and GB.265/8/2. Shelved Conventions no longer require regular reporting on their application under article 22 of the Constitution.

PROTECTION OF CHILDREN AND YOUNG PERSONS

Minimum Age (Coal Mines) Recommendation, 1953 (No. 96)

13. Recommendation No. 96 is autonomous. Its aim is to prohibit the employment of young persons under the age of 16 years in underground work in coalmines and to permit the employment of young persons between 16 and 18 years only for specific purposes. The up-to-date instruments on minimum age and prohibition of child labour are now the two fundamental Conventions, the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), as well as their accompanying Recommendations, the Minimum Age Recommendation, 1973 (No. 146), and the Worst Forms of Child Labour Recommendation, 1999 (No. 190). The latter Recommendation contains specific provisions on underground work. Recommendation No. 96 has thus lost its relevance and is considered as obsolete by the Governing Body.

MIGRANT WORKERS

Reciprocity of Treatment Recommendation, 1919 (No. 2)

14. Recommendation No. 2 is autonomous. It recommends that, on condition of reciprocity and on terms to be agreed between the countries concerned, foreign workers be admitted to the benefit of laws and regulations for protection of workers and to the right of lawful organization. This Recommendation has lost its relevance following the adoption of the Migration for Employment Convention (Revised), 1949 (No. 97), and its accompanying Migration for Employment Recommendation (Revised), 1949 (No. 86), which provide a more comprehensive and general coverage of migrant workers.¹² In addition, a model bilateral agreement on migration is annexed to the latter Recommendation. Recommendation No. 2 was considered obsolete by the Governing Body.

Migration (Protection of Females at Sea) Recommendation, 1926 (No. 26)

15. Recommendation No. 26 is autonomous. It sets out solely and specifically to provide immigrant women and girls on board ship “any material or moral assistance of which they may stand in need”. This instrument was considered as no longer relevant. The Governing Body considered that Recommendation No. 26 is obsolete.

INDIGENOUS WORKERS

*Elimination of Recruiting Recommendation, 1936 (No. 46)**Contracts of Employment (Indigenous Workers) Recommendation, 1939 (No. 58)*

16. Recommendation No. 46 is linked to the Recruiting of Indigenous Workers Convention, 1936 (No. 50); Recommendation No. 58 is linked to the Contracts of

¹² In addition, an item on migrant workers, including an examination of the latter instruments, will be the subject of a general discussion based on an integrated approach at the 92nd Session of the Conference (2004).

Employment (Indigenous Workers) Convention, 1939 (No. 64), and supplements it. These two Conventions were considered as outdated and shelved by decision of the Governing Body.¹³ The instruments to be taken into consideration in this area, according to the subject concerned, are now as follows: as regards the rights of indigenous peoples in general, the Indigenous and Tribal Peoples Convention, 1989 (No. 169); in relation to international migration, the Migration for Employment Convention (Revised), 1949 (No. 97), and Recommendation (Revised), 1949 (No. 86), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); as regards internal labour migration, the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117). Recommendations Nos. 46 and 58 have thus lost their relevance and the Governing Body considered that they are obsolete.

WORKERS IN NON-METROPOLITAN TERRITORIES

Social Policy in Dependent Territories Recommendation, 1944 (No. 70)
Social Policy in Dependent Territories (Supplementary Provisions)
Recommendation, 1945 (No. 74)

17. Recommendations Nos. 70 and 74 are autonomous. Recommendation No. 70 lays down fundamental principles and minimum standards of social policy to be observed in dependent territories. Recommendation No. 74 contains minimum standards to supplement those set forth in Recommendation No. 70. These instruments, which have a specific territorial scope and therefore reflect an outdated approach, are no longer relevant following, inter alia, the adoption of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), which is intended for general application. These instruments have also lost relevance following the accession to independence of a large number of former dependent territories. Both Recommendations have therefore been considered obsolete by the Governing Body.

DOCKWORKERS

Protection against Accidents (Dockers) Reciprocity Recommendation, 1929 (No. 33)
Protection against Accidents (Dockers) Consultation of Organisations
Recommendation, 1929 (No. 34)

18. Recommendations Nos. 33 and 34 are linked to the Protection against Accidents (Dockers) Convention, 1929 (No. 28). That Convention was revised by the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), which is supplemented by Recommendation No. 160 on the same subject. Convention No. 28 was considered outdated and shelved by decision of the Governing Body.¹³ It only has one ratification. The issue of reciprocity covered by Recommendation No. 33 was

¹³ Documents GB.265/LILS/WP/PRS/1 and GB.265/8/2.

taken up in Convention No. 152 and the provisions on tripartite consultations contained in Recommendation No. 34 are now included in Convention No. 152 and Recommendation No. 160. Recommendations Nos. 33 and 34 are thus no longer relevant and the Governing Body therefore considered them obsolete.

QUESTIONNAIRE

In accordance with article 45bis of the Standing Orders of the International Labour Conference, governments are invited to consult the most representative organizations of employers and workers before finalizing their replies to the following questionnaire. The International Labour Office would be grateful if the replies could reach the Office in Geneva by 1 October 2003.

FORCED LABOUR

I. Forced Labour (Regulation) Recommendation, 1930 (No. 36)

- 1. Do you consider that Recommendation No. 36 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?*
- 2. If you replied “no” to question 1, please indicate the reasons why you consider that Recommendation No. 36 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.*

HOURS OF WORK

II. Weekly Rest (Commerce) Recommendation, 1921 (No. 18)

- 1. Do you consider that Recommendation No. 18 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?*
- 2. If you replied “no” to question 1, please indicate the reasons why you consider that Recommendation No. 18 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.*

OCCUPATIONAL SAFETY AND HEALTH

III. Power-driven Machinery Recommendation, 1929 (No. 32)

- 1. Do you consider that Recommendation No. 32 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?*
- 2. If you replied “no” to question 1, please indicate the reasons why you consider that Recommendation No. 32 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any relevant*

information on the effect which has been given, or is proposed to be given, to its provisions.

WELFARE FACILITIES, HOUSING AND LEISURE

IV. Living-in Conditions (Agriculture) Recommendation, 1921 (No. 16)

1. Do you consider that Recommendation No. 16 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 16 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.

V. Utilisation of Spare Time Recommendation, 1924 (No. 21)

1. Do you consider that Recommendation No. 21 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 21 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.

SOCIAL SECURITY

VI. Invalidity, Old-Age and Survivors' Insurance Recommendation, 1933 (No. 43)

1. Do you consider that Recommendation No. 43 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 43 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.

MATERNITY PROTECTION

VII. Maternity Protection (Agriculture) Recommendation, 1921 (No. 12)

1. Do you consider that Recommendation No. 12 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 12 has not lost its purpose or still makes a useful

contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.

PROTECTION OF CHILDREN AND YOUNG PERSONS

VIII. Minimum Age (Coal Mines) Recommendation, 1953 (No. 96)

1. Do you consider that Recommendation No. 96 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 96 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.

MIGRANT WORKERS

IX. Reciprocity of Treatment Recommendation, 1919 (No. 2)

1. Do you consider that Recommendation No. 2 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 2 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.

X. Migration (Protection of Females at Sea) Recommendation, 1926 (No. 26)

1. Do you consider that Recommendation No. 26 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 26 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.

INDIGENOUS WORKERS

XI. Elimination of Recruiting Recommendation, 1936 (No. 46)

1. Do you consider that Recommendation No. 46 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 46 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.

XII. Contracts of Employment (Indigenous Workers) Recommendation, 1939 (No. 58)

1. Do you consider that Recommendation No. 58 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 58 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.

WORKERS IN NON-METROPOLITAN TERRITORIES

XIII. Social Policy in Dependent Territories Recommendation, 1944 (No. 70)

1. Do you consider that Recommendation No. 70 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 70 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.

XIV. Social Policy in Dependent Territories (Supplementary Provisions) Recommendation, 1945 (No. 74)

1. Do you consider that Recommendation No. 74 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 74 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.

DOCKWORKERS

XV. Protection against Accidents (Dockers) Reciprocity Recommendation, 1929 (No. 33)

1. Do you consider that Recommendation No. 33 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 33 has not lost its purpose or still makes a useful

contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.

**XVI. Protection against Accidents (Dockers) Consultation of Organisations
Recommendation, 1929 (No. 34)**

1. Do you consider that Recommendation No. 34 should be withdrawn as proposed by the Governing Body for the reasons stated in the report?

2. If you replied "no" to question 1, please indicate the reasons why you consider that Recommendation No. 34 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization, or provide any relevant information on the effect which has been given, or is proposed to be given, to its provisions.