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DRAFT DECLARATION AND DRAFT CONVENTION
ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

Observations of the Specialized Agencies
International Labour Organisation

In accordance with General Assembly resolution 1780 (XVI), the Secretary-General has the honour to communicate to the Commission the following observations received from the International Labour Organisation.

14 March 1963

"I have the honour to inform you that the Governing Body of the International Labour Office, at its 154th Session (5-8 March 1963) considered resolution 1780 (XVII) adopted by the General Assembly of the United Nations at its Seventeenth Session concerning the preparation of a draft declaration and a draft convention on the elimination of all forms of racial discrimination.

The Governing Body has requested me to bring to the attention of the Commission on Human Rights the international labour standards which have a bearing on racial discrimination and to take such steps as may be necessary to ensure that the provisions of these standards are duly safeguarded in any future international instrument on the elimination of racial discrimination which may be adopted.

In pursuance of the above decision of the Governing Body, I have the honour to submit herewith a document enumerating the provisions which have a bearing on the question of racial discrimination, contained in Conventions and Recommendations adopted by the International Labour Conference.

I should greatly appreciate it if you would be good enough to apprise the members of the Commission on Human Rights of the Governing Body's decision and, at the same time, communicate to them the attached document, in accordance with paragraph 6 of Article II of the Agreement between the United Nations and the International Labour Organisation."

"Provisions against racial discrimination contained in Conventions and Recommendations adopted by the International Labour Conference"

The elimination of all forms of discrimination, including racial discrimination, has always been in the forefront of the objectives pursued by the I.L.O. In the Declaration concerning the Aims and Purposes of the International Labour Organisation which was adopted by the International Labour Conference on 10 May 1944 and which forms an integral part of the Constitution of the Organisation, it is affirmed that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity."

A number of instruments adopted by the International Labour Conference have been specifically directed at the elimination of discrimination. Some of these provide for a general policy of non-discrimination. Others relate to particular categories of persons who have been traditionally disadvantaged.

The principal instruments laying down a comprehensive policy of non-discrimination in matters of concern to the I.L.O. are the Discrimination (Employment and Occupation) Convention (No.111), which is now in force for 38 States, and the Discrimination (Employment and Occupation) Recommendation (No.111), both of 1958. Article 1 of the Convention defines discrimination as

including "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. For the purpose of the Convention the terms "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof (Article 2). The promotion of equality of opportunity and treatment, thus envisaged by the Convention, is concerned not only with the elimination of active forms of discrimination but also with the elimination of inequalities which might be due to static factors. Article 3 of the Convention lists a series of points concerning the implementation of the national policy referred to in Article 2 (co-operation of employers' and workers' organisations and other appropriate bodies, legislative and educational measures, action with regard to public employment and vocational guidance, vocational training and placement services, etc.).

Instruments which provide for a general policy of non-discrimination, although in particular fields, include the Employment Service Recommendation, 1948 (No. 83), which provides that "the employment service should ... not, in referring workers to employment itself discriminate against applicants on the grounds of race, colour, sex or belief"; the Abolition of Forced Labour Convention, 1957 (No. 105), under which each member of the Organization which ratifies the Convention "undertakes to suppress and not to make use of any form of forced or compulsory labour ... as a means of racial, social, national or religious discrimination"; the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), which provides that measures to promote effective consultation and co-operation with and between employers' and workers'

organisations "should be applied without discrimination of any kind against those organisations or amongst them on grounds such as the race, sex, religion, political opinion or national extraction of their members"; and the Vocational Training Recommendation, 1962 (No. 117), which provides that: "Training should be free from any form of discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin".

The instruments which deal with particular categories of persons are not always specifically concerned with the question of discrimination on the ground of race, but a number of them, in particular those designed to ensure equality of treatment for foreign workers, migrant workers and indigenous workers and workers in non-metropolitan territories, do in fact indirectly - and in some cases expressly - embrace that question.

The equality of treatment of foreign nationals has been dealt with primarily in relation to social security entitlements. Three specific instruments deal with the matter: the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); the Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48); and the Equality of Treatment (Social Security) Convention, 1962 (No. 118). In addition the principle of equal treatment of foreign nationals in matters of social security is set forth in the Invalidity, Old-Age and Survivors' Insurance Recommendation, 1933 (No. 43), and in the Social Security (Minimum Standards) Convention, 1952 (No. 102).

With respect to migrant workers, the Migration for Employment Convention (Revised), 1949 (No. 97), provides that each Member for which the 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 matters such as remuneration and conditions of work, membership of trade unions

accommodation and social security; and the substance of that provision is contained also in the Model Agreement on Temporary and Permanent Migration for Employment annexed to the Migration for Employment Recommendation (Revised), 1949 (No.86). The Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No.100) provides that "any discrimination against migrant workers should be eliminated" and that "the principle of equal opportunity for all sections of the population, including migrant workers should be accepted". That instrument then specifies, more particularly, that

"38. Subject to the application of national immigration laws, and of special laws concerning the employment of foreigners in the public service, any barriers preventing or restricting, on account of national origin, race, colour, belief, tribal association or trade union affiliation, access of any section of the population, including migrant workers, to particular types of job or employment should be deemed to be contrary to public policy and the principle of the abolition of any such barriers should be accepted.

"39. Measures should be taken immediately to secure in practice the realisation of the principles set out in paragraphs 37 and 38 of this Recommendation ...".

Finally, that instrument lists a number of specific measures designed to give effect to the principles of equal opportunity and non-discrimination.

A number of instruments have been concerned with eliminating discrimination against indigenous populations and the populations of non-metropolitan territories. The minimum standards set forth in the annex to the Social Policy in Dependent Territories Recommendation, 1944 (No.70) contained the principle that "Discrimination directed against workers for reason of race, colour, confession or tribal association, as regards their admission to public or private employment, shall be prohibited". The additional standards annexed to the Social Policy in Dependent Territories (Supplementary Provisions) Recommendation, 1945 (No.74) comprise the following provision:

"1. It shall be an aim of policy effectively to establish the principle of equal wages for work of equal value in the same operation and undertaking and to prevent discrimination directed against workers by reason of their race, religion or sex in respect of opportunities for employment and promotion and in respect of wage rates.

"2. All practicable measures shall be taken to lessen any existing differences in wage rates which are due to discrimination by reason of race, religion or sex by raising the rates applicable to the lower paid workers."

The Social Policy (Non-Metropolitan Territories) Convention, 1947 (No.82) provides that "it shall be an aim of policy to abolish all discrimination among workers on grounds of race, colour, sex, belief, tribal association or trade union affiliation" in respect of such matters as labour legislation and agreements, admission to employment, conditions of engagement and promotion, opportunities for vocational training, conditions of work, health, safety and welfare measures, discipline, participation in the negotiation of collective agreements and wage rates, and that provision has been taken over in the Social Policy (Basic Aims and Standards) Convention, 1962 (No.117), which constitutes a revision of the earlier Convention designed to make it applicable to independent States. The Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955 (No.104) provides that "with a view to abolishing discrimination between indigenous and non-indigenous workers", penal sanctions for breaches of contracts of employment which are not abolished under the main provisions of the Convention and which do not apply to non-indigenous workers shall be abolished. Finally, the Indigenous and Tribal Populations Convention, 1957 (No.107) is concerned with the integration into the life of their country, on a basis of equality with other elements of the population, of indigenous populations in independent countries; inter alia, it provides that each Member shall do everything possible to prevent all discrimination between workers belonging to the populations concerned and other workers.

In addition, the bulk of international labour Conventions and Recommendations give effect to the principle of non-discrimination simply by the generality of their scope. This generality is expressed in a variety of ways. In some cases it results, by implication, from the fact that the standard provided for in the instrument are applicable to workers in the occupations or undertakings covered, without qualification. In other cases the fact that any differentiation between

groups of workers on grounds such as race is not permissible is expressly emphasised. Thus the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87) provides that "workers and employers, without distinction whatsoever, shall have the right to establish and ... join organizations of their own choosing". The Maternity Protection Convention (Revised), 1952 (No.103) provides that, for the purpose of the Convention, the term "woman" means "any female person, irrespective of age, nationality, race, or creed". The Plantations Convention, 1958 (No.110) provides that each Member which ratifies the Convention "undertakes to apply its provisions equally to all plantation workers without distinction as to race, colour, sex, religion, political opinion, nationality, social origin, tribe or trade union membership. The Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No.55) provides that the Convention and national laws or regulations relating to benefits thereunder shall be so interpreted and enforced "as to ensure equality of treatment to all seamen, irrespective of nationality, domicile or race".