

120

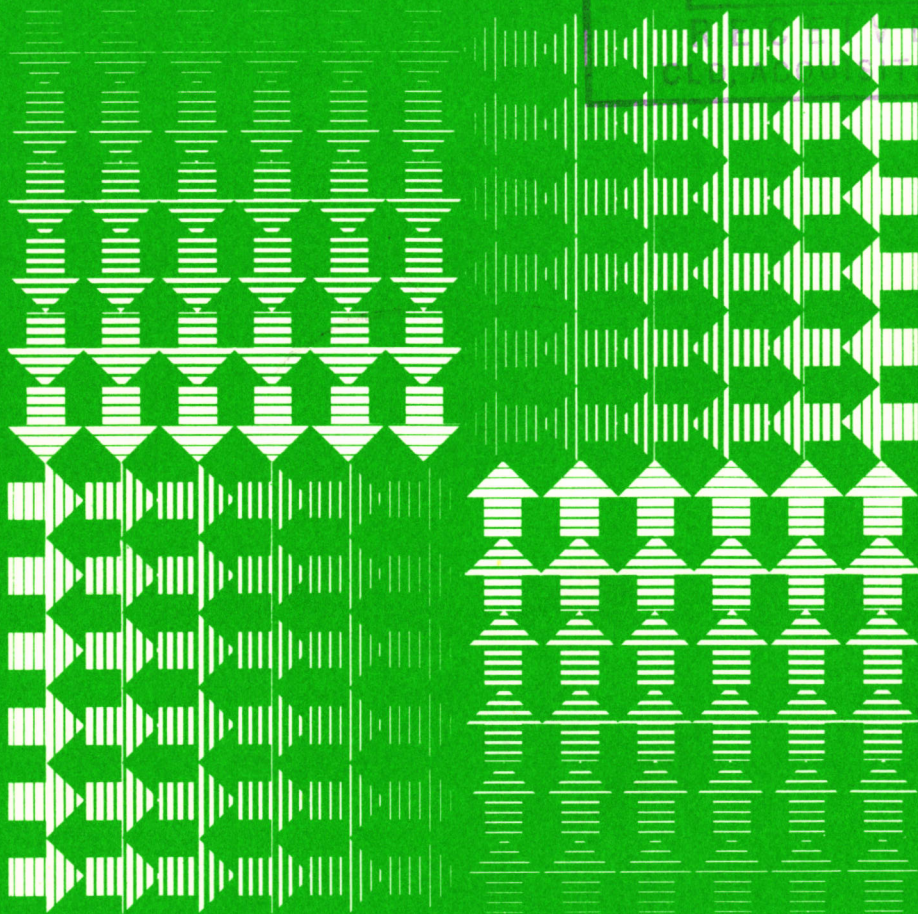
# Migrant workers



General Survey by the Committee of Experts  
on the Application of Conventions and Recommendations

International Labour Conference

66th Session 1980



International Labour Office Geneva

09661/2

International Labour Conference

66th Session 1980

---

Report III

(Part 4 B)

Third Item on the Agenda:  
Information and Reports on the Application  
of Conventions and Recommendations

**General Survey of the Reports  
relating to Conventions Nos. 97 and 143  
and Recommendations Nos. 86 and 151  
concerning Migrant Workers**

Report of the Committee of Experts on the Application of Conventions and  
Recommendations (Articles 19, 22 and 35 of the Constitution) - Volume B

---



International Labour Office Geneva  
**BIBLIOTHEQUE DU B.I.T.**  
Service du prêt  
CH - 1211 GENÈVE 22  
SUISSE

ISBN 92-2-102093-2

---

*First published 1980*

---

The publication of information concerning action taken in respect of international labour Conventions and Recommendations does not imply any expression of view by the International Labour Office on the legal status of the State having communicated such information (including the communication of a ratification or declaration), or on its authority over the territories in respect of which such information is communicated; in certain cases this may present problems on which the ILO is not competent to express an opinion.

ILO publications can be obtained through major booksellers or ILO local offices in many countries, or direct from ILO Publications, International Labour Office, CH-1211 Geneva 22, Switzerland. A catalogue or list of new publications will be sent free of charge from the above address.

---

Printed in Switzerland

## CONTENTS

	<u>Paragraph</u>
<u>INTRODUCTION</u> .....	1
International action on behalf of migrant workers .....	2
Standard-setting activities of the ILO .....	7
Contents of instruments on migrant workers	
(a) 1949 instruments	
Convention No. 97 .....	11
Recommendation No. 86 .....	15
(b) 1975 instruments	
Convention No. 143 .....	16
Recommendation No. 151 .....	20
Ratification of Conventions Nos. 97 and 143 .....	22
Information available .....	25
Arrangement of the survey .....	27
 <u>CHAPTER I. SCOPE</u> .....	28
 <u>CHAPTER II. PRELIMINARY PROTECTION MEASURES</u> .....	46
1. Information and assistance	
(a) Migrant information and assistance services .....	47
Organisation of the service .....	48
Free service .....	53
Activities of the service .....	54
(b) Measures to combat misleading propaganda	62
(c) Documents issued to migrants .....	71
System of supervision of contracts of employment .....	73
Date and place of issue of the contract of employment .....	77

	<u>Paragraph</u>
Contents of the contract of employment ..	83
Other documents .....	89
Supervision and sanctions .....	94
(d) Other measures to facilitate migration ..	97
Measures to facilitate the departure, journey and reception .....	98
(i) Departure .....	104
(ii) Journey .....	111
(iii) Reception .....	116
Health protection .....	129
(i) Health inspection at the time of departure .....	132
(ii) Health inspection on arrival .....	138
(iii) Medical attention .....	142
Transfer of funds .....	146
Exemption from customs duties .....	148
2. Recruitment .....	152
(a) Definitions .....	153
(b) Recruitment machinery .....	158
Official recruitment bodies .....	159
Private bodies .....	166
<u>CHAPTER III. PROTECTION AGAINST ABUSIVE CONDITIONS</u> .....	179
1. Migrations in abusive conditions	
(a) Definitions .....	184
(b) Detection and suppression of migrations in abusive conditions .....	189
(i) General measures .....	192
(ii) Collaboration between States .....	205
(iii) Sanctions .....	214
(iv) Consultation of employers' and workers' organisations .....	227
2. Illegal employment	
(a) Definitions .....	229
(b) Detection and suppression of illegal employment	
(i) General measures .....	231
(ii) Sanctions .....	237
(iii) Consultation of employers' and workers' organisations .....	250

	<u>Paragraph</u>
3. Minimum standards of protection .....	251
(a) Basic human rights .....	252
(b) Rights arising out of past employment ...	259
(c) Cost of expulsion .....	271
(d) Regularisation of the situation .....	275
 <u>CHAPTER IV. EQUALITY OF OPPORTUNITY AND TREATMENT</u>	
1. Principles set forth in the instruments of 1949 and 1975 .....	278
(a) The 1949 instruments .....	280
(b) The 1975 instruments .....	285
2. Subjects covered by the instruments	
(a) Employment and occupation .....	294
(b) Social security .....	299
(c) Trade union rights .....	311
(d) Cultural rights .....	313
(e) Individual and collective freedoms .....	316
(f) General conditions of life	
(i) Housing .....	318
(ii) Legal proceedings .....	321
(iii) Other fields .....	323
3. Repeal or abolition of discriminatory legislative or administrative measures	
(a) General .....	325
(b) Special problems concerning access to employment .....	338
(i) General restrictions .....	340
Restrictions on free choice of employment .....	343
Geographical mobility .....	354
(ii) Restrictions necessary in the interests of the State .....	357
(iii) Recognition of occupational qualifications acquired abroad .....	360
4. Legal protection against discriminatory acts ..	363
(a) Legislation prohibiting discrimination ..	365

	<u>Paragraph</u>
(b) Enforcement machinery .....	370
5. Measures designed to promote equality of opportunity and treatment .....	375
(a) Co-operation with employers' and workers' organisations and other bodies .....	377
(b) Informing and educating the public .....	386
(c) Educational programmes and other measures for migrants .....	390
6. Preservation of national and ethnic identity .....	403
<u>CHAPTER V. SOCIAL POLICY</u> .....	413
1. Reunification of families .....	419
2. Protection of the health of migrant workers ...	435
3. Social services .....	441
4. Consultation of employers' and workers' organisations .....	452
<u>CHAPTER VI. EMPLOYMENT, RESIDENCE AND DEPARTURE</u> .....	455
1. Continued residence in case of incapacity for work .....	456
2. Protection in case of loss of employment	
(a) Continued residence and alternative employment .....	459
(b) Appeal against termination of employment .....	473
3. Guarantees in case of expulsion .....	475
4. Protection on leaving the country of employment .....	479
(a) Remuneration and compensation for holiday entitlement .....	480
(b) Employment injury benefits .....	481
(c) Reimbursement of social security contributions .....	482
(d) Right of redress .....	485

---

	<u>Paragraph</u>
<u>CONCLUSIONS. DIFFICULTIES AND RATIFICATION PROSPECTS .....</u>	486
Issues common to Conventions Nos. 97 and 143 .....	491
Issues relating to Convention No. 97 .....	494
Issues relating to Convention No. 143 .....	500
Ratification prospects .....	528
 APPENDIX I. Texts of the substantive Articles of the instruments concerning Migrant Workers	
 APPENDIX II. Chart of Ratifications	
 APPENDIX III. Information available	





## INTRODUCTION

1. In accordance with article 19 of the ILO Constitution, the Governing Body decided at its 201st Session (November 1976) to request reports on the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) from governments which have not ratified them, as well as reports on the Migration for Employment Recommendation (Revised), 1949 (No. 86), and the Migrant Workers Recommendation, 1975 (No. 151). These reports, which deal with the state of law and practice in relation to the standards laid down by the instruments in question, and the reports supplied under article 22 of the Constitution by governments that have ratified one or both of the Conventions, have enabled the Committee of Experts, in accordance with its usual practice, to make a general survey of the situation.

### International action on behalf of migrant workers

2. The protection of workers employed in a country other than their country of origin has always had an important place among the activities of the ILO. Far from their own country, faced with new living and working conditions that are often entirely unfamiliar to them, ill prepared to defend their interests in surroundings where they meet frequently with indifference and sometimes with hostility, migrant workers more than any others are liable to exploitation, particularly if they are in an irregular situation and the victims of manpower trafficking. It is not surprising, then, that from its very beginning the ILO has given special attention to these workers. The Preamble to the Constitution mentions the protection of the interests of workers when employed in countries other than their own among the priority aims of the ILO. Article 427 of the Treaty of Versailles, which laid down the general principles contained in the original text of the Constitution, added that "the standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein".

3. This deep concern of the ILO for migrant workers can be seen in the adoption, at the First Session of the International Labour Conference in 1919,<sup>1</sup> of international standards already sketching out the two interdependent and complementary aims that were to be those of ILO action: equality of treatment for these workers and the bilateral and tripartite co-ordination of migration policies. With these two aims in view, ILO activities have naturally concentrated on the various technical fields covered by its programmes: human rights, employment, training, living and working conditions, social security and industrial

relations. These activities may be world-wide, inter-regional, regional, subregional, bilateral or national and, in certain cases, their approach is sectoral. They call on all the means of action available to the ILO. The collection and dissemination of information, the preparation of studies and the carrying out of research lead to a better understanding of the various aspects of migration and their effects and of migration policies; standard-setting activities, that is to say the adoption of Conventions and Recommendations by the International Labour Conference and the supervision of their application, provide guiding principles for the action of those responsible in each country and encourage the application of these principles; technical co-operation helps in the training and further training of those responsible (officials, trade unionists, etc.) and in the adoption of suitable institutional structures or the improvement of existing ones; lastly, in order to take into account both the diverse and heterogeneous nature of migration and the activities of other inter-regional, regional or subregional organisations, whether they form part of the United Nations family or not, co-ordination and technical support are arranged with these organisations.

4. Action on behalf of migrant workers is also a matter of concern to the various bodies of the United Nations. The General Assembly, the Economic and Social Council and the Commission on Human Rights are among those giving particular attention to the problem. Since 1972, both the General Assembly and the Economic and Social Council have adopted resolutions on clandestine traffic in labour and on the rights and the social protection of migrant workers and their families, calling on the ILO to intensify its action to protect them. The regional economic commissions have also been active on behalf of migrant workers in Africa, Western Asia, Europe and the Pacific. Furthermore, mention should be made of the adoption by the United Nations General Assembly of Conventions on refugees and stateless persons and of the very important operational activities carried on by the Office of the United Nations High Commissioner for Refugees. The Commission on Human Rights, while requesting the ILO to pay continuing attention to migrant workers and to intensify its action in this field, has decided to keep on its agenda an item entitled "Measures to improve the situation and ensure the human rights and dignity of all migrant workers".<sup>2</sup> At the same time the question of international legal protection for the human rights of individuals who live outside their own country has been the subject of a special study,<sup>3</sup> and a draft declaration<sup>4</sup> on the subject has been drawn up for submission to the General Assembly. The Committee on the Elimination of Racial Discrimination, too, examines the situation of foreign workers in the context of the procedure for examining the reports submitted by governments parties to the International Convention on the Elimination of All Forms of Racial Discrimination. Lastly, the United Nations General Assembly, at its 34th Session in December 1979, decided to create a working group to elaborate an international Convention on the protection of the rights of all migrant workers and their families.

5. With regard to the specialised agencies, the United Nations Educational, Scientific and Cultural Organisation (UNESCO) devotes a great part of its programme concerning migrants to furthering the education and the cultural rights of migrant workers and their families and the World Health Organisation (WHO), in co-operation with the ILO, has set in motion various activities to bring about a better understanding of the health problems of migrants and determine the measures to be adopted in solving them.

6. At the regional level (Organisation for Economic Co-operation and Development, Intergovernmental Committee for European

Migration, European Economic Community, Economic Commission for Western Asia, Customs and Economic Union of Central Africa, Common African and Mauritian Organisation, Cartagena Agreement, Council of Europe), various intergovernmental organisations not belonging to the United Nations family have undertaken activities, sometimes very far-reaching, in the organisation of migrations or the protection of migrants' rights.

#### Standard-setting activities of the ILO

7. Broadly speaking, the exceptions<sup>5</sup> being few, the Conventions and Recommendations adopted by the International Labour Conference are of general application. They must therefore apply to national and foreign workers equally. This result usually follows from the general nature of the terms used in the instrument.<sup>6</sup> Sometimes, however, a provision specifies that it applies without distinction whatsoever<sup>7</sup> or, more specifically, without distinction of nationality.<sup>8</sup> In some cases, provisions of general application lay down special measures for migrant workers.<sup>9</sup> Lastly, the social security standards include special provisions for these workers.

8. The standard-setting activities of the ILO specifically concerning migrant workers have been concentrated in two main directions.

9. Firstly, in the field of social security, the International Labour Conference has endeavoured to establish the right to equality of treatment between nationals and aliens and at the same time to institute an international system for the maintenance of acquired rights and rights in course of acquisition for workers who transfer their residence from one country to another. It has accordingly adopted three Conventions and a Recommendation: the Equality of Treatment (Accident Compensation) Convention and Recommendation, 1925 (No. 19 and No. 25), the Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48), the revision of which is under consideration, and the Equality of Treatment (Social Security) Convention, 1962 (No. 118). An analysis of the standards contained in them (and of the special clauses concerning migrants in the other social security Conventions) shows that the work of the Conference has led to a progressive limitation of the scope of certain restrictive clauses based on the method of financing social security, and to a mitigation of the effects of reciprocity clauses for developing countries.

10. Secondly, the Conference has endeavoured to find comprehensive solutions to the problems facing migrant workers by adopting instruments containing a coherent set of standards dealing with a wide range of questions. The Migration for Employment Convention and Recommendation, 1939 (No. 66 and No. 61), and the Migration for Employment (Co-operation between States) Recommendation, 1939 (No. 62) form the first attempt of the kind. Convention No. 66, however, has never come into force for want of ratifications. It was therefore revised in 1949, when the Migration for Employment Convention (Revised) and Recommendation (Revised), 1949 (No. 97 and No. 86) were adopted. These instruments deal with the organisation of migration and equality of treatment under law and administrative practice.<sup>10</sup> The International Labour Conference has more recently supplemented them by adopting the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the Migrant Workers Recommendation, 1975 (No. 151). These instruments supplement those of 1949; they are intended in particular to suppress clandestine migration and the illegal employment of migrants and to promote genuine equality of opportunity and treatment.

Contents of instruments on  
migrant workers

(a) 1949 instruments

Convention No. 97

11. Convention No. 97 contains a series of measures designed to govern the conditions in which migration for employment can take place and to guarantee equality of treatment for migrant workers in a number of fields. This instrument has three Annexes, which may, however, be excluded from ratification. In the absence of a declaration of exclusion the provisions of the Annexes have the same effect as those of the Convention (Article 14). Annex I deals with the recruitment, placing and conditions of labour of migrants for employment recruited otherwise than under government-sponsored arrangements for group transfer; Annex II deals with the recruitment, placing and conditions of labour of migrants for employment recruited under government-sponsored arrangements for group transfer; Annex III deals with the importation of the personal effects, tools and equipment of migrants for employment. It is worth mentioning that the Convention and Annex III are general in scope and apply to migration for employment whether spontaneous or organised, whereas Annexes I and II apply only to organised migration.

12. The general measures of protection provided for by the Convention include the maintenance of a free service of information and assistance for migrants (Article 2), action against misleading propaganda relating to emigration and immigration (Article 3), measures to facilitate the departure, journey and reception of migrants for employment (Article 4), the maintenance of appropriate medical services (Article 5) and the authorisation of migrants for employment to transfer their earnings and savings (Article 9). The Convention also prohibits the expulsion in the event of incapacity for work of migrants for employment admitted on a permanent basis (Article 8).

13. Article 6 places on each State Member for which the Convention is in force the obligation to apply to immigrants lawfully within its territory equality of treatment with its own nationals. This equality of treatment must be applied in the following fields:

- (a) the main aspects of conditions of employment, training, membership of trade unions and the enjoyment of the benefits of collective bargaining and also accommodation, so far as these matters are regulated by law or regulations or are subject to the control of administrative authorities;
- (b) social security, subject to certain arrangements;
- (c) employment taxes, dues or contributions payable in respect of the person employed;
- (d) legal proceedings relating to the matters referred to in the Convention.

14. Certain more detailed provisions are contained in the Annexes. Mention may be made in particular of the obligation to regulate the operations of recruitment, introduction and placing of migrants for employment, which must either be carried out by the public

services or, when they are carried out by the employer, his representative or a private agency, be authorised and supervised by the competent authority (Annex I and II, Articles 3 and 4); the provisions concerning the delivery to the migrant before his departure of a copy of his contract of employment and a document providing information on the general conditions of life and work in the territory of immigration (Annex I, Article 5, and Annex II, Article 6); specific measures to facilitate the departure, journey and reception of the migrants, such as the provision of interpretation services, any necessary assistance during the period of adaptation, the safeguarding of the welfare of migrants and members of their family during the journey (Annex I, Article 6, and Annex II, Article 7); the application of penalties to persons who encourage clandestine immigration (Annex I, Article 8, and Annex II, Article 13); the exemption from customs duties of personal effects and tools belonging to migrants for employment and their families (Annex III).

#### Recommendation No. 86

15. Recommendation No. 86 recommends a set of measures intended to supplement the provisions of Convention No. 97, particularly in respect of assistance and information for migrants (Part III), recruitment and selection (Part IV) and equality of treatment in access to employment (Part V). It also contains provisions to protect migrant workers against expulsion on account of their lack of means or the state of the employment market (Part VI). Appended to the Recommendation is the text of a model agreement specifying the methods for applying the principles set forth in Convention No. 97 and Recommendation No. 86, which is intended as a model for States concluding bilateral agreements.

#### (b) 1975 instruments

#### Convention No. 143

16. Convention No. 143 contains two Parts concerning, respectively, migrations in abusive conditions and equality of opportunity and treatment. Any Member that ratifies the Convention may, at the time of ratification, exclude either of these Parts from its acceptance (Article 16).

17. Part I, relating to migration in abusive conditions, lays down the general obligation to respect the basic human rights of migrant workers (Article 1). It requires each government that has ratified it to seek systematically to determine whether there are illegally employed migrant workers on its territory and whether there depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected to conditions contravening relevant international instruments or agreements or national laws or regulations (Article 2). Part I also requires that all necessary measures shall be adopted at the national and international levels - (a) to suppress clandestine movements of migrants and their illegal employment; and (b) against the organisers of illicit or clandestine movements of migrants for employment and against those who employ workers who have immigrated in illegal conditions (Article 3). The measures must be such as to ensure that the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities (Article 5).

Systematic contact and exchange of information on the subject must be established between member States (Article 4) and provision must be made for the definition and the application of administrative, civil and penal sanctions (Article 6).

18. Part I of the Convention also provides for certain measures to protect migrant workers who have lost their employment or whose position is irregular (Articles 8 and 9).

19. Part II of the Convention, which is based on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), requires each government that has ratified the Convention to declare and pursue a policy designed to promote and to guarantee equality of treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms. Although it leaves States free to act by methods appropriate to national conditions and practice, the Convention lays down a series of measures to be taken for the purposes of this policy (Article 12). It does, however, authorise certain narrowly defined restrictions on equality of access to employment (Article 14).

#### Recommendation No. 151

20. Recommendation No. 151 specifies the measures to be taken to ensure the observance of the principle of equality of opportunity and treatment and also the fields in which this equality is to apply (Part I). It lays down the principles of a social policy designed not only to enable migrant workers and their families to share in advantages enjoyed by nationals but also to take account of such special needs as they may have until their adaptation is achieved. The Recommendation accordingly suggests a number of measures relating to the reunification of families, the protection of the health of migrant workers and the institution of social services (Part II). Lastly, it recommends the adoption of certain minimum standards of protection concerning, in particular, loss of employment, expulsion and departure from the country (Part III).

21. The substantive provisions of the four instruments are reproduced in Appendix I.

#### Ratification of Conventions Nos. 97 and 143

22. At the date of the present survey Convention No. 97, which came into force on 22 January 1952, has been ratified by 34 States. Fourteen of them are also bound by all three annexes; one State has accepted Annexes I and II, two States have accepted Annexes I and III; one State has accepted Annexes II and III and one State Annex II.

23. Convention No. 143 came into force on 9 December 1978. By March 1980 it had been ratified by eight States, of which one had excluded from its acceptance Part I concerning migrations in abusive conditions.

24. Detailed information on States bound by these instruments will be found in Appendix II to this survey.

### Information available

25. Reports have been received from 109 countries (98 States and 11 non-metropolitan territories) either under article 19 of the Constitution of the ILO on Conventions Nos. 97 and 143 and Recommendations Nos. 86 and 151 or under article 22 on the two Conventions when they have ratified them. Appendix III gives detailed information on the countries that have communicated reports. The Committee has taken into account the observations received from employers' and workers' organisations to which the reports of governments have been communicated in accordance with article 23, paragraph 2, of the Constitution of the ILO.

26. The nature and extent of the information provided varies greatly from one report to another. Although some are very full, giving a detailed account of policy respecting migrant workers and endeavouring to cover the essence of the questions dealt with in the four instruments forming the subject of the present survey, it must be observed that, broadly speaking, the contents of the reports received often give an imperfect account of the situation. This is due, no doubt, to the very great variety and complexity of the problems dealt with in the standards relating to migrants, of which the scope has not always been clearly appreciated. Another difficulty is perhaps to be found in the fact that in most of the matters mentioned above the adoption of legislative measures has to be supplemented by positive action on the part of the government and the employers' and workers' organisations or other bodies and also by international co-operation. These few remarks show the extent and the diversity of the legislative texts and of the practical information essential to such a survey. Many government reports, however, go no farther than referring to provisions in the legislation or the constitution without providing information on practical measures. Furthermore, the information supplied by governments often relates to certain aspects only among those dealt with by the instruments. In these circumstances, the Committee has attempted, as usual, to supplement the information communicated by the governments so that the present survey can give a fuller account of the way in which the principles set forth in the instruments under consideration are applied.

### Arrangement of the survey

27. The plan adopted for the present survey is the following: after a first chapter dealing with scope, Chapter II deals with preliminary measures of protection. It is divided into two parts, one on information and assistance and the other on recruitment, introduction and placing of migrant workers. Chapter III deals with protection against abusive conditions and has three parts, the first on migrations in abusive conditions, the second on the illegal employment of migrant workers and the third on minimum standards of protection. Questions relating to equality of opportunity and treatment and to social policy are analysed in Chapters IV and V. In Chapter VI the Committee examines certain aspects of the employment, residence and departure of migrant workers, and the survey ends with the conclusions derived from the examination of the information available, in particular a summary of difficulties encountered in the application of the Conventions and a reference to ratification prospects.



Notes to the Introduction

<sup>1</sup> In 1919 the International Labour Conference adopted the Unemployment Recommendation, 1919 (No. 1), which recommends, in connection with the recruiting of bodies of workers in one country with a view to their employment in another, consultation with employers and workers and bilateral agreements (Part II), and the Reciprocity of Treatment Recommendation, 1919 (No. 2).

<sup>2</sup> Resolution 25 (XXXV) of 14 March 1979.

<sup>3</sup> E/CN.4/Sub.2/392 and Corr. 1.

<sup>4</sup> E/CN.4/1336.

<sup>5</sup> For example, the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), does not cover inequality of treatment based on nationality.

<sup>6</sup> For example, instruments intended to protect women, children, etc.

<sup>7</sup> For example, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

<sup>8</sup> For example, the Maternity Protection Convention, 1919 (No. 3).

<sup>9</sup> This is true for the standards relating to employment and placement services (the Employment Service Convention and Recommendation, 1948 (No. 88 and No. 83), and the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)).

<sup>10</sup> To these instruments should be added the Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No. 100), which, in addition to containing provisions on the protection of migrants during their journey and during their employment, recommends certain measures to discourage migratory movements considered undesirable for the migrant workers and the communities and countries of their origin.

## CHAPTER I

### SCOPE

28. The four instruments dealt with in this survey are aimed at protecting migrant workers and the members of their families. The use of the term "migrant workers" in both the titles and the text of these instruments clearly indicates that they concern only migrant workers and not migrants in general, it being understood, however, that, as workers, refugees and displaced persons should also be protected by these standards.<sup>1</sup> In principle, they cover all forms of worker migration, be it spontaneous or organised but, as already mentioned, Annexes I and II to Convention No. 97 apply only to recruited migrant workers.

29. Paragraph 1 of Article 11 of Convention No. 97 and Paragraph 1(a) of Recommendation No. 86 define a "migrant for employment" as "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". Paragraph 1 of Article 11 of Convention No. 143 contains a very similar definition. However, it is specified that the definition applies only for the purpose of Part II of the Convention, which concerns equality of opportunity and treatment.

30. From the definition of the term "migrant for employment" given in the standards of 1949 and the definition in Part II of Convention No. 143, it follows that, subject to the exceptions set out below, they apply to the entire active population, with the exception of self-employed workers. Considering its objectives, this also appears to be the case of Part I of Convention No. 143, as well as of Recommendation No. 151, the provisions of which are designed to supplement and clarify those of Convention No. 143. It should also be noted that no limitations are permitted by reason of the type of occupation, the nature of the duties or the level of the salary of a migrant worker. Moreover, with regard to Convention No. 97, the Committee has had to point out that managers, executive staff, enterprise administrators and highly qualified technicians are migrant workers within the meaning of Article 11 of the Convention.<sup>2</sup>

31. Both the standards of 1949 and those of 1975 apply to migrant workers regardless of their nationality. Since they are not based on the principle of reciprocity, a migrant worker does not have to be the subject of a State which has ratified them or which guarantees identical treatment to the subjects of the country of immigration or employment in order to benefit from the protection they provide for.

32. The four instruments in question relate to the migration of workers in general, regardless of the length of a worker's stay or his occupation in the countries where they are applicable. Countries of employment may not refuse to apply them to workers who do not intend or do not have permission to settle permanently, as is the case, in particular, for those known as "seasonal" workers.<sup>3</sup> Nevertheless, certain provisions apply only to workers authorised to stay permanently, for instance Article 8 of Convention No. 97, which is aimed at protecting migrant workers and their families from expulsion from the country of employment on the grounds of incapacity to work.

33. The four instruments apply only to international migration of workers and not to internal migration.<sup>4</sup>

34. Apart from a few exceptions indicated below, the chief of which concerns seamen,<sup>5</sup> who are covered by special standards,<sup>6</sup> they cover virtually all sectors of economic activity.

35. Convention No. 97, Recommendation No. 86 and Part II of Convention No. 143 provide for the exclusion of certain categories of workers from their scope. Thus, none of these three instruments applies to "frontier workers", to "short-term entry of members of the liberal professions and artistes"<sup>7</sup> or to "seamen" (paragraph 2(a), (b) and (c) of Article 11 of Convention No. 97; Paragraph 3(a), (b) and (c) of Recommendation No. 86 and paragraph 2(a), (b) and (c) of Article 11 of Part II of Convention No. 143). These instruments do not define the term "frontier worker",<sup>8</sup> nor do they specify the length of the stay of members of the liberal professions or artists.<sup>9</sup> Moreover, Part II of Convention No. 143 excludes two further categories of workers: "persons coming specifically for purposes of training or education" (paragraph 2(d) of Article 11)<sup>10</sup> and "employees of organisations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments" (paragraph 2(e) of Article 11). Although the latter exclusion is fairly flexibly worded, contrary to what one government seems to think,<sup>11</sup> it may not be interpreted in such a way as to justify the exclusion of all fixed-term workers recruited collectively. In fact, during the preparatory work, it was repeatedly pointed out that, essentially, this provision concerns persons with special qualifications who go to a country to undertake specific short-term technical assignments.<sup>12</sup>

36. Most of the provisions of the instruments apply to regular migrant workers. This is specifically the case, for instance, of Article 6 of Convention No. 97 and of Part II of Convention No. 143 concerning equality of opportunity and treatment<sup>13</sup> and of the provisions of the other instruments dealing with this matter,<sup>14</sup> as well as of the provisions aimed at protecting migrant workers from expulsion from the employment country on account of the economic situation.<sup>15</sup> Conversely, a number of provisions, such as Part I of Convention No. 143, were adopted specifically to solve the special problem of irregular migrants.

37. The instruments are also concerned with the members of migrant workers' families. A large number of provisions thus apply to them, including, in particular, those concerning health care and medical examinations,<sup>16</sup> guarantees against expulsion,<sup>17</sup> equality of opportunity and treatment<sup>18</sup> and family reunification.<sup>19</sup> As a rule, they provide for the protection of the family members permitted to accompany

or join the migrant worker. In this respect, Paragraph 15 of Recommendation No. 151 provides for the application of the measures designed to facilitate family reunion to the migrant worker's spouse and, if they are dependent on him, his children, father and mother.<sup>20</sup>

38. In the context of national regulations, the implementation of the standards concerning migrant workers is ensured by an extremely wide range of laws and regulations covering a variety of areas. Owing to the wide range of the texts, it is very difficult to determine precisely the extent to which the scope of the standards coincides with that of national legislation and the findings will not necessarily be identical for each of the provisions of the instruments. Certain problems regarding scope will therefore be considered when national legislation and practice with respect to the substantive provisions of the instruments are examined. Nevertheless, a few general findings may be mentioned at this point.

39. In their reports, governments make particular reference to laws and regulations of two different types: texts of a general nature, such as labour codes and labour laws, and texts more specifically designed to regulate migratory movements, such as laws concerning emigration (and the issuing of passports and visas), immigration and the sojourn and employment of foreigners.

40. Governments quote the texts of a general nature chiefly in relation to the provisions concerning equality of opportunity and treatment. In the majority of cases, the scope of such legislation depends on the existence of a work relationship, i.e. it is frequently specified that the law applies "to workers", regardless of their nationality.<sup>21</sup> Where the definition of the term "workers" makes no specific reference to the latter criterion, the wording is sufficiently general implicitly to cover foreign workers.<sup>22</sup> This is also true of legislation whose scope depends on the establishments covered.<sup>23</sup>

41. Generally speaking, the scope of the texts more specifically designed to regulate the situation of migrants is broader than that envisaged by the instruments. Thus, a great many laws lay down the conditions of entry and sojourn of foreigners, irrespective of whether or not they are workers.<sup>24</sup> Likewise, as a rule, certain emigration laws apply to nationals leaving the country and not only to persons emigrating for employment purposes.<sup>25</sup>

42. In States which have ratified Convention No. 97, certain difficulties have arisen as a result of changes in migratory movements. For some time now, a growing number of immigrants have been employed in countries traditionally regarded as emigration countries. The Committee of Experts has asked the governments of the countries whose legislative and administrative machinery concerns only emigration to take the necessary steps to ensure the implementation of the Convention in respect of immigrant workers as well.<sup>26</sup> In reply, one government has indicated that the matter is being studied with a view to assuring them better protection.<sup>27</sup>

43. Among the countries which have not ratified the Conventions in question, one states in its report that it is up to the immigration or employment countries to take the necessary measures to apply these standards.<sup>28</sup> However, it is obvious that many of the provisions of the Conventions and Recommendations under consideration necessitate, first, the adoption of specific measures by the countries of origin and, secondly, co-operation not only between countries of origin and employment countries but also, in certain cases, from third countries.

44. Referring to multilateral or bilateral economic and social co-operation agreements, certain other countries indicate in their reports that the foreign workers they employ from countries which are parties to such agreements should not be considered migrant workers under the terms of the international labour standards in question.<sup>29</sup>

45. Unless he is among the exceptions listed in Article 11 of Convention No. 97, Paragraph 3 of Recommendation No. 86 or Article 11 of Part II of Convention No. 143, it would seem legitimate to regard every worker who leaves or has left his own country and is employed in another country as coming within the scope of Conventions Nos. 97 and 143 and Recommendations Nos. 86 and 151. Moreover, the fact that national legislation uses different terminology - as is the case in the great majority of countries - should not constitute an obstacle to the application of the standards under consideration.

### Notes to Chapter I

<sup>1</sup> See in this respect ILC, 32nd Session, Geneva, 1949, Record of Proceedings (RP), p. 285 and Appendix XIII, p. 578.

<sup>2</sup> ECE, 1957, p. 93, Cuba.

<sup>3</sup> Concerning the application of the standards to seasonal workers, see ILC, 32nd Session, Geneva, 1949, RP, Appendix XIII, p. 590; ILC, 60th Session, Geneva, 1975, Report V(1), para. 65, p. 13; *idem*, Report V(2), Office Commentary, p. 19; *idem*, RP, paras. 68 and 69, p. 645. See also below, para. 290.

<sup>4</sup> This follows both from the objectives of the four standards and from the definition of the term "migrant worker" given in the 1949 standards and in Part II of Convention No. 143, which presupposes movement "from one country to another".

<sup>5</sup> Para. 2(c) of Article 11 of Convention No. 97, Paragraph 3(c) of Recommendation No. 86 and para. 2(c) of Article 11 of Part II of Convention No. 143.

<sup>6</sup> The Conventions and Recommendations relating to seafarers are normally applicable without distinction of nationality. (However, the placing facilities provided for by the Placing of Seamen Convention, 1920 (No. 9) need only be made available to nationals of other ratifying States, and the Seafarers' Identity Documents Convention, 1958 (No. 108) does not require ratifying States to issue identity documents to non-nationals.)

<sup>7</sup> The wording of para. 2(b) of Article 11 of Convention No. 143 is slightly different on this point.

<sup>8</sup> The French Government, for instance, indicates that they are nationals of a country who, while remaining domiciled in the frontier zone of that country to which, as a rule, they return every day, go and work as frontier workers in the frontier zone of another country.

<sup>9</sup> According to the information available, it varies from one to six months.

<sup>10</sup> This is the case in Czechoslovakia, for example, where, according to the Government, migratory movements are in the form of

economic collaboration, whose main purpose is to give foreigners the opportunity during a limited period of time to acquire or perfect the occupational qualifications their country needs.

<sup>11</sup> Norway.

<sup>12</sup> See in particular ILC, 60th Session, Geneva, 1975, Report V(2), Office Commentary, p. 19. It should also be noted that, during the second discussion, the proposal to add a more general provision "excluding all types of short-term workers who are admitted to perform specific functions or tasks for a limited or fixed period of time and have to leave the country when their employment ends" was not adopted (idem, RP, para. 68, p. 684).

<sup>13</sup> In accordance with Article 10 of Convention No. 143, the policy of equality of opportunity and treatment that every State which has ratified the Convention must declare and pursue concerns "persons who as migrant workers or as members of their families are lawfully within its territory", while Article 6 of Convention No. 97 applies "to immigrants lawfully within its territory".

<sup>14</sup> Paragraph 16 of Recommendation No. 86 and Part I of Recommendation No. 151.

<sup>15</sup> Article 8 of Convention No. 143, Paragraph 18 of Recommendation No. 86 and Paragraph 30 of Recommendation No. 151.

<sup>16</sup> Article 5 of Convention No. 97.

<sup>17</sup> Article 8 of Convention No. 97, Paragraph 18 of Recommendation No. 86 and Article 9 of Convention No. 143.

<sup>18</sup> In particular, Part II of Convention No. 143.

<sup>19</sup> Paragraph 15 of Recommendation No. 86 and Paragraphs 13 and ff. of Recommendation No. 151.

<sup>20</sup> See also in this connection Paragraph 15(3) of Recommendation No. 86.

<sup>21</sup> Colombia (section 2 of the Labour Code); Congo (section 1 of the Labour Code); Gabon (section 1 of the Labour Code); Mali (section 1 of the Labour Code); Madagascar (section 1 of the Labour Code); Senegal (section 1 of the Labour Code), etc.

<sup>22</sup> For instance: Egypt (section 2 of the Labour Code); Philippines (section 13 of the Labour Code); Lebanon (section 2 of the Labour Code); Mexico (section 8 of the Federal Labour Act).

<sup>23</sup> For instance: Bolivia (sections 1 and 2 of the Labour Code); Norway (sections 2 and 3 of Act No. 4 of 14 February 1977 on workers' protection and working environment); Panama (sections 1 and 2 of the Labour Code); Venezuela (section 8 of the Labour Act and Decree No. 1563 of 31 Dec. 1973: Regulations under the Labour Act).

<sup>24</sup> For instance: France (Ordinance No. 45-2657 of 2 Nov. 1945 concerning the entry and sojourn of foreigners in France); Guyana (Immigration Act, 1948); India (Foreigners Act, 1946); Jamaica (Aliens Act, 1946); Sri Lanka (Immigrants and Emigrants Act, 1948); Tanzania (Immigration Act, 1972); Zambia (Immigration Act, 1965).

<sup>25</sup> For instance: Sri Lanka (Immigrants and Emigrants Act, 1948).  
Non-Metropolitan Territory: United Kingdom (Montserrat) (Protection of  
Emigrants Act of 1929).

<sup>26</sup> This is the case of Spain and Italy, amongst others.

<sup>27</sup> Italy.

<sup>28</sup> Senegal.

<sup>29</sup> Byelorussian SSR, German Democratic Republic, Ukrainian SSR,  
USSR.

## CHAPTER II

# PRELIMINARY PROTECTION MEASURES

46. The instruments provide for workers and their families leaving their country to be given various guarantees and facilities. These cover, first, information and assistance, namely information for migrants and measures to combat misleading propaganda, the documents migrants need to have when they leave their country and other measures to facilitate migration. They deal secondly with the problems arising from the recruitment of migrant workers.

### 1. Information and assistance

#### (a) Migrant information and assistance services

47. Any decision to emigrate is fraught with consequences. In order to be able to make a well-founded decision, the intending emigrant should therefore be able to obtain reliable information, particularly on emigration and immigration formalities and living and working conditions in the country to which he intends to emigrate. Likewise, once he has reached his destination, the migrant worker should be able to obtain the help and particularly the information he needs to settle under the most favourable conditions. With a view to meeting this two-fold need, Article 2 of Convention No. 97 provides that "Each Member ... 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".

#### Organisation of the service

48. The aforesaid Article 2 of Convention No. 97 is relatively flexibly worded. For instance, by saying that "Each Member ... undertakes to maintain, or satisfy itself that there is maintained, an ... service ...", this provision gives governments great freedom of choice in the organisation of information services, which can be entrusted either to official bodies or to private institutions. In this respect, Paragraph 5 of Recommendation No. 86 specifies that such service should be conducted by public authorities or non-profit voluntary organisations approved and supervised by the public authorities or by a combination of the two.



49. According to the information available, most migrant information and assistance services appear to be organised by public authorities. In some countries, they are run by the emigration<sup>1</sup> and immigration<sup>2</sup> authorities; in others, the task of assisting and informing migrants is entrusted to labour administration services<sup>3</sup> and, in still others, it is performed by other administrative services.<sup>4</sup> In countries with a federal structure, such information services can be conducted by both the federal authorities and the constituent bodies.<sup>5</sup> One government<sup>6</sup> indicates that there is no official service responsible for giving information to foreigners, but that the matter should be regulated by a new bill concerning foreigners. This also appears to be the case in another country.<sup>7</sup>

50. Some immigration countries maintain a double network of information services, one abroad and one inside the country. The services maintained abroad are responsible for providing intending immigrants with information on the conditions for settling and the employment opportunities in the country concerned. They thus have a particularly important and delicate task to perform, inasmuch as they intervene before the worker leaves his country. Such information can be disseminated by diplomatic missions and consulates<sup>8</sup> or by other means, such as opening immigration offices abroad.<sup>9</sup> Under bilateral manpower agreements, some governments have posted officials in emigration countries. Thus, through its offices abroad, one country's<sup>10</sup> National Immigration Office is endeavouring to improve its information services to future immigrants. Another country indicates that its migrant worker information services are provided by specially trained officials of the general employment directorate assigned to its recruitment offices in the emigration countries.<sup>11</sup>

51. For information services to be efficient, they must have adequate documentation. Since it is often difficult, particularly for emigration countries, to obtain the information they need by themselves, bilateral exchange of information should be encouraged by every possible means.<sup>12</sup> Although governments rarely mention this matter in their reports, the information available shows that, in practice, centralisation and communication of information is in some cases regulated in the context of bilateral co-operation. Thus, some recruitment agreements provide that the competent authorities of the immigration country will provide the documents needed for the information of migrants and that the services of the emigration country will be responsible for their dissemination.<sup>13</sup> The legislation of one country<sup>14</sup> lays the obligation on its official emigrant information services to get in touch with the competent services of other countries. Moreover, consular officials or diplomats can also contribute to the improvement of information services by furnishing their governments with regularly updated information on the admission, residence and employment conditions and the situation on the labour market of the country to which they are accredited.<sup>15</sup>

52. The activities of the information services organised by the public authorities can be usefully complemented by those of voluntary organisations which enjoy the confidence of migrant workers and are in close contact with them. Several governments<sup>16</sup> have mentioned the work of such bodies and particularly of denominational associations. In one country,<sup>17</sup> the responsibility for providing assistance and information to migrant workers rests chiefly with voluntary and occupational institutions, which divide it between them according to the nationality of the workers; these institutions receive considerable financial support from the authorities, which co-ordinate their activities. The activities of private bodies can also be incorporated in the

organisation established by the public authorities. Thus, one country's<sup>18</sup> reception network comprises regional offices which, in some regions, are administered by private associations that must be approved by the authorities. One government indicates that its information services are also conducted by private bodies with which it has concluded an agreement, in accordance with its programme for the adaptation of immigrants.<sup>19</sup>

### Free service

53. Article 2 of Convention No. 97 and Paragraph 5(1) of Recommendation No. 86 stipulate that assistance and information services for migrant workers should be free. Generally speaking, this principle does not seem to cause any problems in practice, although the information supplied by certain governments is not always explicit on this point.

### Activities of the service

54. Convention No. 97 describes the tasks to be performed by the service mentioned in Article 2 in very general terms. However, by providing for a "service to assist migrants for employment, and in particular to provide them with accurate information", it stresses the provision of information and advice. In this respect, Paragraph 5(2) of Recommendation No. 86 specifies that the service should "advise migrants and their families, in their languages or dialects or at least in a language which they can understand, on matters relating to emigration, immigration, employment and living conditions, including health conditions in the place of destination, return to the country of origin or of emigration, and generally speaking any other question which may be of interest to them in their capacity as migrants".

55. Although most governments which have supplied information on the matter confine themselves to confirming the existence of a service to provide information to emigrants and immigrants, some reports give a more complete picture of the range of activities of the information services.

56. In the emigration countries, assistance consists mainly of giving information and advice, usually on living and working conditions. In this respect, one government<sup>20</sup> specifies that its Emigration Office, which is responsible for giving emigrants information on all matters of interest to them, also provides information on the cost of living, including rents, in the country of destination; in fact, its main task is to study the problems confronting immigrants and try to find solutions to them. To this end, it may collaborate with its diplomats accredited to the receiving countries. In another country,<sup>21</sup> the Employment Service organises seminars lasting a few days to acquaint workers with their future living and working conditions.

57. In the immigration countries, the information services sometimes work in collaboration with the immigrant reception service. One government<sup>22</sup> mentions the existence of a national network of reception, information and guidance services for foreign workers, which is responsible for giving the latter the practical information they need to adapt themselves; the reception bureaux refer the migrant workers to the services dealing with their problems, instruct them as to procedure and, where necessary, give them technical or linguistic

help. Another government<sup>23</sup> indicates that its Immigrants' Fund provides the whole range of reception and information services for migrant workers, which include publication of information bulletins, establishment of consultation centres for adults, children and adolescents and assistance in finding accommodation and contacting public institutions such as schools, youth centres, hospitals, etc. In one country,<sup>24</sup> information services have been set up in two local employment agencies; these services are responsible not only for giving foreigners advice and information, but also for facilitating their contacts with the local and national authorities, organisations of employers and workers and any other services which may be able to help them. They also assist in their placement.

58. As Paragraph 5(2) of Recommendation No. 86 states, it is essential that, in immigration countries, information and advice be given in a language that the migrants can understand. Although few governments have supplied any details on this point, it may reasonably be supposed that such is the case in the great majority of countries where information services exist.<sup>25</sup>

59. The information provided by the information services is often supplemented by brochures written in the languages of the countries from which the majority of the migrant workers come.<sup>26</sup> Designed to facilitate the social and occupational adaptation of the migrants, these publications are distributed by the information services; they can also be handed out to them on their arrival at the frontier posts or delivered to their residence by post. In this connection, the Committee was interested to examine the brochures sent by two Nordic countries<sup>27</sup> whose value and interest deserve mention. They contain general and practical information on the most important aspects of the life of the country and seek to indicate solutions to the many problems with which foreigners are confronted on matters such as the granting and renewal of residence and work permits, naturalisation, the functioning and regulation of the labour market, social security, housing, the tax system, education, etc. One of the brochures also gives information on the mental outlook and moral attitudes of the country, which should help to avoid misunderstandings. Although designed as real reference works for migrant workers, these publications cannot deal exhaustively with all subjects, so booklets on special subjects are also available.

60. Some countries<sup>28</sup> also publish country guides for intending emigrants, containing information on the immigration policy, employment prospects and living and working conditions in the countries concerned.

61. In their reports on their efforts to provide information, several governments mention the use of the mass media, such as the press, radio, television and the cinema.<sup>29</sup>

(b) Measures to combat misleading propaganda

62. The existence of official information services does not suffice to guarantee that migrant workers are efficiently and objectively informed. Such workers must also be protected against the machinations of certain intermediaries who have an interest in encouraging migration by every possible means, including the dissemination of erroneous information on the possibilities and conditions of emigration. It is therefore essential that measures be taken to combat this type of abuse. This matter is closely linked to that dealt with in Chapter III, section 1.

63. Paragraph 1 of Article 3 of Convention No. 97 provides that "Each Member ... undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration".

64. It should be noted that, unlike the first Convention on migrant workers adopted in 1939,<sup>30</sup> Convention No. 97, with manifest concern for flexibility, does not define the measures governments should take to combat misleading propaganda, so that it is up to them to decide the nature of such measures. Governments may thus adopt legal provisions prohibiting misleading propaganda or providing for verification of the information given to migrants, or they may take practical measures aimed, for instance, at correcting deceptive information or, again, they may take more general measures with regard to recruitment. Furthermore, this Convention does not define the concept of misleading propaganda. From a study of the preparatory work, it appears that this term should be taken to mean all false information, irrespective of the manner in which it is given.<sup>31</sup>

65. The measures governments take to combat misleading propaganda are either preventive or repressive. The former are aimed at regulating and supervising the dissemination of information concerning emigration or immigration and the latter at prohibiting and taking punitive action against misleading propaganda and, in certain cases, propaganda aimed at encouraging emigration.

66. Some countries indicate that they have taken measures to guarantee the quality of the information given to migrants by demanding that persons or enterprises desirous of disseminating such information should have a licence. One country's<sup>32</sup> legislation concerning the protection of emigrants forbids the dissemination for profit of information or advice on emigration prospects and living and working conditions in the receiving country without authorisation. Such authorisation must be refused if the applicant does not possess the necessary moral qualities and occupational qualifications; exemptions are, however, permitted, notably in the case of state corporations and associations recognised as being of public interest, which are concerned with the welfare of migrants. Likewise, the employment legislation of another country prohibits all activities aimed at promoting emigration unless they have been authorised.<sup>33</sup>

67. The authorities may also intervene in order to correct any false impression given by erroneous or exaggerated information. In this respect, one government<sup>34</sup> indicates that its migration service discourages prospective emigrants if the information communicated by the consular authorities accredited to the receiving country is unfavourable. Similar protection is given in countries whose legislation provides for the compulsory certification of labour contracts for employment abroad. In some countries, before certifying a labour contract, the competent authority must make certain that the worker has understood the terms of the contract and that his consent has not been obtained by force, fraud or error;<sup>35</sup> similar checks are often made with regard to recruitment.<sup>36</sup> In other cases, the labour contract may not be certified if the competent authority considers that it infringes the dignity of the worker or is likely to be detrimental to him in any other way<sup>37</sup> or, again, if it does not safeguard his interests.<sup>38</sup> The supervision exercised by the authority responsible for certifying contracts appears to be most efficient in countries whose legislation provides for penalties for inciting workers to emigrate without having a formal labour contract.<sup>39</sup>

68. With regard to penal sanctions against misleading propaganda, some countries' legislation represses any incitement to emigrate if the offender resorts to fraudulent means.<sup>40</sup> In one country, publication of information likely to mislead intending emigrants constitutes an offence, irrespective of whether there was any intent to mislead.<sup>41</sup> The law may also prohibit any propaganda for emigration.<sup>42</sup>

69. Whereas the measures analysed in the preceding paragraphs essentially concern emigration, little information has been supplied on measures concerning immigration. In this respect, one government mentions the general provisions of its legislation concerning employment agencies which punish inaccurate or misleading statements.<sup>43</sup> In one country, the Immigration Act imposes imprisonment or a fine for the publication or dissemination of false or misleading information for the purpose of encouraging immigration.<sup>44</sup> Moreover, one government<sup>45</sup> indicates that the public employment service's monopoly of recruitment of foreign workers and the very strict conditions imposed on any request for exemption constitute a guarantee against misleading propaganda.

70. To be efficient, measures against misleading propaganda should be taken while migrant workers are still in their own country, but this does not relieve the immigration or employment countries of responsibility in the matter. Therefore, it is extremely important that when they discover that foreign workers are the victims of fraudulent activities, particularly by intermediaries, immigration countries should take the necessary measures to remedy the situation, where appropriate in co-operation with the emigration countries, as stipulated in paragraph 2 of Article 3 of Convention No. 97. One government<sup>46</sup> indicates that its immigration officials posted abroad are aware of this problem and endeavour to combat misleading propaganda by drawing the local authorities' attention to it and publishing the necessary rectifications.

(c) Documents issued to migrants

71. In order that future migrants may be able to make a well-founded decision to go abroad, they should be informed of the working and living conditions to which they will be exposed in the employment country before they leave their own country.

72. Articles 5 of Annex 1 and 6 of Annex 2 of Convention No. 97 list the documents which should be issued to migrants. Nevertheless, these provisions are applicable only to States which "maintain a system of supervision of contracts of employment between an employer, or a person acting on his behalf, and a migrant for employment". Where no system of supervision of labour contracts is maintained, no such obligation exists.

System of supervision of contracts of employment

73. As already mentioned, the legislation of a number of countries<sup>47</sup> provides for controls on employment contracts to be executed abroad, which have to be certified by an official of the Ministry of Labour or by some other authority designated for the purpose. By virtue of such legislation, the employer is required to draw up the employment contract in writing and submit it for approval to the competent authority before the worker leaves his country. Approval is not given unless the terms of the contract comply with the provisions of the legislation which, in some cases, contains a standard contract.

74. Some countries' legislation provides that a foreign worker may not carry on a wage-earning activity unless he has an employment contract approved by the competent authority.<sup>48</sup>

75. The obligation to draw up an employment contract is generally prescribed by bilateral recruitment agreements<sup>49</sup> and, in certain cases, subregional agreements,<sup>50</sup> whether they concern nominal or numerical requests for labour. Certain agreements provide that employment contracts must be certified by the competent service of the employment country,<sup>51</sup> others that they must be certified by the diplomatic or consular authorities of the emigration country.<sup>52</sup>

76. A distinction should be made between the employment contract properly so-called and the requests for labour made by employers desirous of recruiting workers abroad, which set the recruitment procedure in motion. Such requests, which are normally addressed to the competent authorities of the country of origin by the official service of the immigration country, must contain all the information workers require concerning the employment offered and their selection. It is only after the request for labour has been accepted that the employment contract is drawn up and signed by the parties concerned. However, certain bilateral agreements provide that requests for labour, which must follow an established model, take the place of an employment contract as soon as they have been signed by the workers concerned.<sup>53</sup>

Date and place of issue of the  
contract of employment

77. The above-mentioned provisions of Convention No. 97 provide that a copy of the contract of employment must be "delivered to the migrant before departure".

78. This is the case in countries whose legislation provides for the supervision of contracts for employment abroad. Once a contract has been certified, one copy of it is delivered to the worker, another to the employer or his representative and a third is kept by the competent official. In some cases, the legislation<sup>54</sup> provides that a copy of the contract must also be given to the consular authority of the place where the contract is to be performed.

79. Likewise, certain governments of countries which do not allow foreign workers to work unless they have a contract indicate (although this is not always spelled out in the legislation) that a copy of the contract must be given to the worker before his departure.<sup>55</sup>

80. Lastly, in accordance with the terms of bilateral agreements, contracts are usually delivered to workers either by the administration of the country concerned or directly by the employer.<sup>56</sup> Some agreements even specify the place of delivery.<sup>57</sup> The number of copies to be made of the employment contract varies according to the agreements. As a rule, one copy of the contract is given to each of the contracting parties and the remaining copies are kept by the competent services of the country of emigration and the country of employment.

81. To allow for special circumstances, the Convention provides for an exception to the principle of delivery of the contract before the departure of the worker.<sup>58</sup> The above-mentioned provisions give the

governments concerned the option of agreeing that the employment contract may be delivered to the worker "in a reception centre on arrival in the territory of immigration". However, such an exception is permitted only after agreement between the governments concerned. Moreover, in order that the worker should not leave his country without having a minimum of information, the Convention provides for him to be informed by a written document "of the occupational category for which he is engaged and ... in particular the minimum wage which is guaranteed to him".

82. From the information received, it has not been possible to ascertain whether, in practice, governments have had recourse to this option.

#### Contents of the contract of employment

83. Paragraph 1(b) of both Article 5 of Annex 1 and Article 6 of Annex 2 provides that contracts of employment should contain provisions "indicating the conditions of work and particularly the remuneration offered to the migrant".

84. In most cases legislation which provides for a system of supervision of employment contracts before the departure of migrant workers also provides, either directly or by explicit or implicit reference to the general provisions governing employment contracts in writing, that a contract must contain clauses defining the rights and obligations of the parties, and specifies the particulars it must contain.<sup>59</sup> In some cases, contracts must be drawn up in accordance with a prescribed model.<sup>60</sup>

85. The clauses a contract for employment abroad must contain very often include, in addition to information concerning the identity of the parties, indications of the nature of the employment, the date of engagement, the duration and place of performance of the contract, the amount and method of payment of the wage, the hours of work and transport and repatriation expenses.<sup>61</sup> Some laws also cover questions relating to the termination of the contract<sup>62</sup> and make provision for the accommodation of the worker<sup>63</sup>, while others do not require that the hours of work be the subject of a special provision.<sup>64</sup> Moreover, some governments of countries whose legislation does not appear to regulate the content of contracts systematically indicate in their reports that the terms and conditions of work must be clearly spelled out in the employment contract.<sup>65</sup> In this respect, the Committee wishes to emphasise that it is important that the labour contracts delivered to migrant workers should be as complete as possible, so as to give the latter a clear and accurate idea of their rights and obligations. In particular, the Committee considers it desirable that contracts should regulate such essential matters as hours of work, weekly rest periods and annual leave, without which the indication of the wage, as required by the Convention, may become meaningless.

86. Bilateral manpower agreements often contain a standard contract or a model of a contract, the terms of which are usually jointly agreed upon by the administrations of the countries concerned.<sup>66</sup> A standard contract to govern the employment relationship is often a document printed in advance, which the parties must sign without modification after inserting certain particulars relating to each individual case, such as the name and address of the parties, the nationality and legal status of the worker, the nature of the employment and the wage, etc.

87. Few governments have sent copies of such contracts. From the information available, however, it appears that, except in a few cases<sup>66bis</sup>, they regulate the rights and obligations of the parties in detail. Thus, most of the standard contracts<sup>67</sup> the Committee has examined deal with the nature of the employment, the duration of the contract and the date of engagement of the worker, wages, hours of work, weekly rest, annual leave and travel and repatriation expenses. The principle of equality of treatment in respect of conditions of work is often laid down in an express provision. Some contracts also contain provisions concerning family reunification, certain social security benefits, such as payment of compensation for unemployment as long as the worker is not entitled to payments under the social security system, medical and hospital care and procedure for the termination of the contract. Some contracts also contain provisions concerning the law which governs them and the courts having jurisdiction in the event of litigation.

88. While the various standard contracts usually cover similar matters, their approach to them may differ. For instance, as far as hours of work are concerned, some contracts<sup>68</sup> refer to the provisions in force in the receiving country, whether they be legislation, collective agreements or works rules, and mention the normal hours of work for guidance, while others specify the hours of work per day and per week.<sup>69</sup> The same is true of provisions concerning wages. Although the majority contain a clause establishing the principle of equality of treatment in respect of wages and some specify that, in the event of violation thereof, the wage of the foreign worker must be aligned with that paid to national workers,<sup>70</sup> such a general formula,<sup>71</sup> however useful it may be, is not in itself sufficient to enable the foreign worker to ascertain the wage he will be paid. In determining the wage of the foreign worker, some contracts<sup>72</sup> fix the actual amount, others refer to the scale drawn up through collective bargaining and sometimes indicate the rate paid to a national worker in the same circumstances,<sup>73</sup> while still others establish a wage bracket within which the final wage will be paid in accordance with the qualifications and output of the worker.<sup>74</sup>

#### Other documents

89. The contract of employment is not the only document which, in accordance with the terms of Convention No. 97, must be delivered to migrant workers before their departure. Paragraph 1(c) of Article 5 of Annex 1 and paragraph 1(c) of Article 6 of Annex 2 to the Convention provide that the migrant worker must receive "in writing before departure, ... information concerning the general conditions of life and work applicable to him in the territory of immigration".

90. A number of bilateral manpower agreements contain special provisions concerning the delivery of a document in accordance with the Convention. Thus, a series of agreements concluded by an emigration country specifies that, with a view to furnishing the foreign workers with information, the competent authority of the receiving country must submit a data sheet to the official service of the emigration country containing information on all matters that might be of interest to such workers, such as the employment situation, the general terms and conditions of admission, working and living conditions, wages, taxes, social security, the main provisions of the labour legislation and the regulations governing the transfer of the worker's savings, etc.<sup>75</sup> This information is to be given in the language of the worker's country of origin and must be regularly updated.



91. Other agreements stipulate that governments will take the necessary measures to inform workers of the living and working conditions in the immigration countries; moreover, before his departure, each worker receives a document containing precise information on the living and working conditions in the immigration country.<sup>76</sup> In some cases, the agreements may also spell out precisely the information which migrant workers are to be given through the national administrations, but without expressly demanding that such information be given in writing.<sup>77</sup>

92. As far as measures adopted unilaterally are concerned, according to the information available, legislation containing provisions for the delivery of written documents to migrants is rare. In one country,<sup>78</sup> however, the emigration regulations provide that, before their departure, unskilled workers must receive a written statement containing information on the general living and working conditions prevailing in the country of destination, including the type of jobs available, wage levels and the cost of living, the normal hours of work and the educational facilities. Moreover, as mentioned in the section concerning migrant information and assistance services, the competent authorities of certain emigration countries issue intending emigrants with brochures containing detailed information on the employment country (see paragraph 60 above). While mentioning the lack of written material, one government indicates that such information is widely disseminated by migrant workers returning to the country.<sup>79</sup>

93. Be this as it may, the Convention may be regarded as having achieved its aim if migrant workers are given the information they require on the living and working conditions to which they will be exposed in the receiving country, either by the assistance and information services in their country of origin or in the context of a system established by bilateral agreements. Moreover, the procedure of certification of labour contracts in force in many countries should constitute a further guarantee in this respect.<sup>80</sup>

#### Supervision and sanctions

94. Paragraph 3 of both Article 5 of annex I and Article 6 of annex II provides that the competent authority should take the necessary measures to ensure that the provisions concerning the documents to be delivered to migrants are respected and that penalties are imposed in the event of violations thereof. Violations are likely to be committed by workers (particularly if they conceal the reasons for their departure), employers, their representatives or other intermediaries, and it is not to be excluded that officials might also be implied.<sup>81</sup> As a rule, legislation which provides for a system of certification of labour contracts before the departure of the migrant worker contains provisions designed to ensure its application. In certain cases, the law specifies that the authorities must refuse migrant workers who do not have a duly certified employment contract permission to leave the country.<sup>82</sup> Likewise, transport companies may be forbidden to issue tickets to workers who do not have such contracts.<sup>83</sup> In certain countries, the act of inciting a worker to go abroad for the purpose of obtaining a job without complying with the legal provisions and, in particular, without having a formal employment contract, is punishable with a fine or imprisonment or both.<sup>84</sup> Moreover, violation by an employer of the obligation to have the employment contract signed and certified may also be punishable with a fine, by virtue of specific or general provisions.<sup>85</sup>

95. As far as compliance with the rules governing the contents of the contract are concerned, the procedure of certification described in paragraphs 73-75 above suffices to ensure that the contract will be in accordance with the legal provisions.

96. With regard to the provisions of bilateral agreements stipulating that an employment contract should be delivered before departure, it should be borne in mind that the contract is generally delivered by the official services. Moreover, the procedure governing delivery of the documents required for the entry and residence of a worker in a receiving country constitutes a further guarantee. The agreements which it has been possible to examine often provide that the consular authorities of the immigration country will grant an authorisation of temporary residence only on presentation of a duly certified employment contract.<sup>86</sup>

(d) Other measures to facilitate migration

97. This section will deal successively with measures to facilitate the departure, journey and reception of migrant workers and the members of their families; health care and good hygienic conditions for migrants; and financial measures governing the transfer of migrants' funds and exemption from customs duties.

Measures to facilitate the departure, journey and reception

98. Article 4 of Convention No. 97 provides that "Measures shall be taken as appropriate by each Member, within its jurisdiction, to facilitate the departure, journey and reception of migrants for employment." This provision, which was sufficiently flexibly worded to allow governments a certain latitude, requires some comment.

99. First, the use of the words "as appropriate" implies that the obligation provided for in Article 4 of Convention No. 97 is subject to the existence of fairly sizeable migratory movements.

100. Secondly, under the terms of Article 4, measures are to be taken within the jurisdiction of each State. In principle, this means that an immigration country will not be expected to intervene in the preparatory stages of migration and that emigration countries cannot be held responsible for taking measures to facilitate the reception of their nationals in another country. However, if, as is often the case, immigration countries actively participate in the recruitment procedure on the territory of the migrant workers' country of origin, they may be called upon, under the terms of bilateral agreements, to intervene in the process of departure. In this respect, one government<sup>87</sup> indicates that it assigns officials to 45 foreign countries for the purpose of selecting intending emigrants and facilitating their departure and journey.

101. Thirdly, Article 4 of Convention No. 97 does not indicate the nature of the measures which should be taken to facilitate the departure, journey and reception of migrant workers. On this point, however, it is supplemented by Article 6 of Annex I and Article 7 of Annex II of this Convention, which provide for specific methods of application that will be examined hereinafter. It should be recalled that application of the annexes can be excluded at the time of ratification of the Convention. Consequently, for States which ratify

the Convention without excluding Annexes I and II the measures they prescribe to give effect to Article 4 of the Convention are compulsory, whereas for States which exclude Annexes I and II they are merely indicative and constitute a form of guideline.

102. Fourthly, Article 4 of the Convention does not spell out the methods by which States should ensure the application of the measures to facilitate migration. In this connection some States of Europe and Latin America have referred to the activities of the Intergovernmental Committee for European Migration (ICEM) whose function is to prepare and organise migrations and assure the transport and reception of migrants.<sup>88</sup> Another government<sup>89</sup> indicates that, since immigration is not organised by the public authorities, the latter are not, in principle, responsible for taking such measures; should the need arise, it is incumbent on employers and their organisations to do so. The preparatory work on Convention No. 97 shows that Article 4 was "worded in a general manner, so that to permit recourse where desirable to voluntary agencies in the application of measures".<sup>90</sup> In principle, moreover, the Convention does not prevent the necessary measures from being taken by other bodies, such as organisations of employers and workers, or even on the initiative of the employers themselves. In such cases, the State will be under an obligation, as one government confirms,<sup>91</sup> to satisfy itself that the appropriate measures are indeed taken and, if necessary, to intervene to supplement them.

103. Governments have provided very little information on the measures taken to give effect to Article 4 of the Convention and to the provisions of Annexes I and II which supplement it, particularly as far as the departure of migrant workers is concerned. More often than not, governments merely recall that such measures exist without describing their substance. Moreover, one government<sup>92</sup> indicates that, because of the very large number of immigrants, its administrative services are not sufficient to ensure their reception.

#### (1) Departure

104. The efficiency of the measures taken to facilitate the departure of migrant workers, as of those to facilitate their reception, largely depends on the existence of an appropriate assistance and information system such as is provided for in Article 2 of Convention No. 97, which was examined at the beginning of this chapter. The experience gained by the employment service of a Scandinavian country<sup>93</sup> which has a sizeable movement of migrants to a neighbouring country is particularly significant. When an intending emigrant comes in, the employment service, after giving him objective information on the living and working conditions in the receiving country, endeavours to help him find a suitable job before his departure. To this end, the specialised officials of the employment service, who have undergone a period of training in the receiving country, have a regularly published list of job offers and are able to telephone their counterparts and even employers in the other country. When he leaves the country, the worker carries with him a formal introduction to his future employers.

105. The existence of a properly organised recruitment procedure can also help to promote the departure of migrants in satisfactory conditions. Without analysing the different systems of recruitment, which will be studied in the second part of this chapter, the Committee wishes to draw attention to certain measures likely to facilitate migratory movements. One government<sup>94</sup> mentions the establishment of

selection centres near the areas where intending emigrants live, as is advocated in Paragraph 14(6) of Recommendation No. 86. The transfer of the latter to the centre and, if necessary, their journey back is taken care of free of charge by the public authorities, which also pay for the workers' keep. Another government<sup>95</sup> has reported the reorganisation of its official recruitment centres, with a view to making them more operational, so as to ensure the orderly departure of workers and thus put a stop to anarchic emigration.

106. The rapidity with which selection operations are carried out helps to improve conditions during the preparatory stages of emigration and is the subject of specific provisions in certain bilateral agreements. Thus, one agreement specifies that pre-departure medical examinations should be organised in such a way that workers can return home the same day.<sup>96</sup> Another agreement provides that intending emigrants' stay in assembly centres should not exceed a certain time limit.<sup>97</sup>

107. In accordance with Articles 6(a) of Annex I and 7(a) of Annex II, several governments have referred to measures taken either unilaterally or under bilateral manpower agreements to simplify administrative formalities. In one country,<sup>98</sup> the employment service facilitates the completion of certain formalities, such as those connected with the medical examination, the delivery of the necessary documents, emigration and the transfer of funds. One government<sup>99</sup> indicates that it has simplified emigration procedure by doing away with the superfluous administrative formalities.

108. The delivery of the documents required for the departure of migrants and their entry and residence in the receiving country is often regulated in bilateral manpower agreements. In this respect, one government<sup>100</sup> has indicated that its authorities have endeavoured, in particular by means of bilateral agreements, to reduce to the strict minimum the formalities connected with the emigration of their nationals. This concern is also shared by certain immigration countries. One government<sup>101</sup> states that it has concluded manpower agreements with certain emigration countries which have made it possible to facilitate recruitment methods and departure procedure. In fact, many of the bilateral agreements the Committee has been able to examine regulate the delivery of documents such as passports and residence authorisations. In some cases, the authorities responsible for the application of an agreement are required to ensure the rapid delivery of the necessary documents.<sup>102</sup> Bilateral agreements may also leave it to the governments concerned to take suitable measures to simplify the administrative formalities and the procedure for emigration to receiving countries, including the delivery of residence and work permits.<sup>103</sup>

109. Recommendation No. 86 also stipulates certain measures to facilitate migration. In Paragraph 5(4), it suggests the organisation of preparatory courses to inform migrant workers of "the general conditions and the methods of work prevailing in the country of immigration, and to instruct them in the language of that country". In Paragraph 10(b), it recommends the adoption of measures to ensure the vocational training of migrant workers.

110. A number of emigration countries mention having taken action along these lines. One government<sup>104</sup> indicates that intended emigrants are given vocational training and language instruction suited to the living and working conditions in the receiving country. The legislation of one country<sup>105</sup> provides for a series of measures to

promote the vocational training of emigrants, such as the establishment of official training centres, the planning of courses to meet their needs and the institution of education grants, etc.

(ii) Journey

111. In accordance with Article 6(d) of Annex I and Article 7(d) of Annex II, measures to facilitate the journey should include "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". This provision is closely linked to Article 5(b) of Convention No. 97, in that the medical services provided for in the latter must be responsible for "ensuring that migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions ... during the journey ...".

112. Modes of transport have evolved considerably since the adoption of Convention No. 97 in 1949. Air transport, which is subject to special international regulations, has constantly expanded. In the present circumstances, moreover, virtually no one organises special transport for migrant workers any more. The provisions of Convention No. 97 and the annexes concerning the journey of migrants have therefore ceased to be of current interest. This is confirmed by one government<sup>106</sup> which indicates that, since most of its emigrants travel by air, the provisions concerning migrants' welfare during their journey have been dropped.

113. Bilateral manpower agreements often contain provisions regulating the organisation of the transport of migrant workers, but most of them are of a general nature. They are aimed at ensuring that the journey will be made in the most favourable conditions and their mode of application must be either agreed upon by the governments concerned or fixed by the competent authority of the receiving country. Some agreements specify the mode of transport to be used and may demand the presence of escorts.

114. In some cases, transport of emigrants is also regulated by legislation. In one country,<sup>107</sup> only enterprises licensed to that end are authorised to organise the transport of emigrants. A licence is issued only to persons with the necessary experience and qualifications and on payment of a deposit. The conditions of transport must be similar to those offered for mass tourism and comply with the prescribed standards of safety and hygiene. Moreover, the competent authority establishes maximum tariffs for the cost of the journeys. The legislation of another country,<sup>108</sup> authorises the competent ministry to lay down both minimum conditions regarding the equipment of certain means of transport and rules for ensuring their supervision, with a view to protecting emigrants' health. Several governments<sup>109</sup> indicate that aircraft and other means of transport used are regularly inspected.

115. Neither the Convention nor the annexes make specific reference to the question of protecting migrant workers in the event of accidents and diseases occurring during their journey. Nevertheless, the Committee considers that it would be of interest to give examples of a few of the measures taken in this respect. In one emigration country,<sup>110</sup> the accidents that befall emigrants during their journey are assimilated to occupational accidents and compensated under the general social security system. In some cases, they may be covered by the social security system of the receiving country. Thus, the social

security legislation of certain French-speaking African countries<sup>111</sup> regards accidents occurring during the journey as occupational accidents which, by virtue of labour legislation, must be paid for by the employer. In other cases, such risks are covered by supplementary insurance.

(iii) Reception

116. Although Article 4 of Convention No. 97 does not define "reception of migrants for employment", it would seem that the purpose of the measures provided for by this Article and Articles 6 of Annex I and 7 of Annex II, is to help migrant workers to solve the personal problems they face on arrival and during an initial period of adaptation. On this point, the objective of this Convention appears to be more limited than that of the 1975 instruments, and particularly the social policy objective of Recommendation No. 151, which aims at the integration of migrant workers into the society of the receiving country. In some cases, however, the methods used may be the same for both objectives.<sup>112</sup>

117. In accordance with Article 6 of Annex I and Article 7 of Annex II, measures to facilitate the reception of migrant workers include, where appropriate, "the simplification of administrative formalities", "the provision of interpretation services" and "any necessary assistance during an initial period in the settlement of the migrants and members of their families authorised to accompany or join them". These three types of measures will be examined successively.

118. The administrative formalities connected with the entry, residence and employment of migrant workers can be simplified by measures taken either unilaterally or under bilateral agreements.

119. With regard to unilateral measures, one government has specified that the administrative formalities provided for by legislation concerning immigration have been simplified to the maximum degree.<sup>113</sup> Other governments have referred to the existing machinery to help migrants complete the administrative formalities, in particular the reception service.<sup>114</sup> One country has reported a novel experiment:<sup>115</sup> the establishment in three large cities of a reception centre which houses all the main administrative and social services dealing with matters concerning migrants (such as the social security and family allowance offices, the national employment service and specialised social services, etc.). Another government<sup>116</sup> reports that one of its municipal administrations includes an aliens' office, which co-ordinates the activities of the various administrative services with a view to helping migrant workers to complete administrative formalities. In order to make contacts with workers of different cultural backgrounds easier, one government<sup>117</sup> indicates that it has taken measures such as the introduction of a language bonus to encourage its officials to improve their linguistic abilities.

120. Certain bilateral manpower agreements also contain provisions aimed at facilitating both the delivery to migrant workers of the documents required for their stay in the immigration country<sup>118</sup> and the completion of administrative formalities.<sup>119</sup>

121. Ignorance of the language of the receiving country often makes it very difficult for migrant workers to undertake all the initial formalities which have to be completed. For this reason, on their arrival in the country, the annexes to Convention No. 97 provide for the institution of interpretation services.

122. The importance of such services has been stressed by an emigration country,<sup>120</sup> which indicates that it has repeatedly suggested their establishment in the principal countries to which its nationals emigrate; in countries which have been unable to follow this suggestion, the emigration department has provided its own interpretation services.

123. Several countries have mentioned the existence of interpretation services in their reports. In some countries, the reception services, irrespective of whether or not they are organised by the public authorities, have their own interpretation and translation services.<sup>121</sup> In other countries, language assistance is provided free of charge either by private bodies with which the government has concluded an agreement,<sup>122</sup> or by employers.<sup>123</sup> In still other countries, the services of certain administrations which have frequent contacts with foreigners may also have their own interpreters.<sup>124</sup>

124. Although governments have not always systematically described the nature of the help offered by interpretation services, it seems that, in general, these services are intended to resolve the difficulties migrant workers may meet with both in their daily life and in their contacts with the authorities. In this respect, one government<sup>125</sup> draws attention to the establishment of a telephonic interpretation service which migrant workers can call upon if they have language problems; interpretations can be given in over 50 languages and cover such varied matters as medical care, legal and financial assistance, employment, schools and housing.

125. Few governments have supplied specific information on the assistance given to migrants during an initial period, in accordance with Article 6(c) of Annex I and Article 7(c) of Annex II. However, it seems that such assistance is often given by the services responsible for the reception of migrants, and particularly by voluntary organisations.

126. Some governments have reported the existence of programmes for the social adaptation of immigrants. In one country,<sup>126</sup> the newly arrived foreign workers have to follow a paid course of socio-occupational adaptation. Comprising an introduction to the language of the country and information on medico-social matters, safety and labour legislation, the course is aimed at facilitating their insertion into the enterprise and the national community. In another country,<sup>127</sup> following a reappraisal of the reception machinery with a view to improving its efficiency, a guidance and adaptation programme for new immigrants is planned. It will consist of intensive language training, information courses on the country and its institutions, which will be completed with visits to them, and the necessary assistance in finding jobs (through interviews) and accommodation.

127. Several governments have mentioned assistance in finding accommodation, which remains a major problem for migrant workers. In principle, this matter comes within the general purview of the policy of equality of opportunity and treatment which is dealt with in Chapter IV. In addition, the availability of housing is particularly relevant to the reunification of families, and certain aspects of this question are dealt with in the section of Chapter V devoted to this matter. However, governments have taken certain measures aimed more particularly at overcoming the difficulties migrant workers may face on their arrival. Because of their ignorance of local conditions, the administrative formalities to be completed and the language of the host

country, they are the first to suffer from the housing shortage prevailing in most of the immigration countries, and particularly in the towns. Special measures, such as those advocated in Paragraph 10(a) of Recommendation No. 86, may therefore be necessary. Accordingly, temporary accommodation centres have been established in several countries<sup>128</sup> by both public authorities and voluntary organisations. Efficient assistance may also be given by reception services qualified to help migrants to find accommodation.<sup>129</sup> One government<sup>130</sup> has mentioned the existence of a system of assistance consisting in financial aid to needy immigrants to cover their accommodation on their arrival.

128. A number of more general measures, such as training in the language of the receiving country, vocational training and information on the rights of migrant workers, can also help to facilitate the reception of immigrants. However, their main aim is to enable migrant workers in the longer term to take full advantage of their rights and opportunities in respect of employment and occupation and thus to facilitate their integration in the host country. The Committee will therefore examine such measures in the chapter on equality of opportunity and treatment.

#### Health protection

129. By virtue of Article 5 of Convention No. 97, States undertake to maintain, within their 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".

130. One government<sup>131</sup> has stated that there are no medical services specifically responsible for migrant workers. The Convention, as the preparatory work shows, does not demand that special medical services be set up for migrants, provided "appropriate" medical services exist.<sup>132</sup> Moreover, the obligation to maintain such services exists only within the limits of the jurisdiction of the State and, as the preparatory work confirms, that should be taken to mean territorial jurisdiction,<sup>133</sup> which does not however exclude special arrangements between States.

131. In accordance with Article 5(a) of Convention No. 97, the health of migrant workers and members of their families should be checked "where necessary" at the time of departure and on arrival.

#### (i) Health inspection at the time of departure

132. Health inspection at the time of departure has a two-fold aim: to ensure that the migrant is in a fit state to undertake the journey without endangering his health and to avoid the expulsion of workers and their families at the frontier of the immigration country on grounds of public health.



133. According to the information available, the matter of health inspection of migrants at the time of departure does not appear to raise any major problems as far as the workers themselves are concerned.

134. A number of governments have referred to medical examinations prescribed by general legislation concerning emigration. In some countries,<sup>134</sup> the emigration service is responsible for the medical examination of intending emigrants and the members of their families authorised to accompany or join them. In other cases,<sup>135</sup> the law establishes the principle of medical examinations of emigrants but leaves it to the competent officials to decide whether such examinations are necessary. The power of decision thus given to emigration officials does not appear to be inconsistent with Article 5 of the Convention which provides for health inspections "where necessary".

135. Most legislation which has instituted supervision of contracts for employment abroad makes the medical examination of workers before their departure compulsory. The official responsible for certifying the labour contract must also ascertain that the legal provisions concerning medical examination have been observed.<sup>136</sup> Similar provisions are contained in certain laws governing recruitment.<sup>137</sup> In cases where legislation prescribing medical examinations concerns only the workers themselves, the Committee has drawn the attention of governments for which the Convention is in force to the need to extend the benefit of medical examinations to the members of the worker's family, in accordance with Article 5(a).

136. Migrants' health is sometimes checked by the authorities of the country of destination before the migrants leave their country of origin.<sup>138</sup> Diplomatic or consular representatives abroad will not issue an entry visa or certificate of registration until the intending emigrant has undergone a medical examination which meets the criteria laid down by the legislation of the receiving country. In such cases, a second medical examination by virtue of the legislation of the emigration country does not appear to be necessary.

137. Medical examinations may also be carried out during the selection process by representatives of the body responsible for recruitment.<sup>139</sup> Prior medical selection, for which the consent of the government of the emigration country must be obtained, is very often regulated in bilateral manpower agreements. In some cases, bilateral agreements merely provide that recruited workers must have a certificate of health issued by the health authorities of the emigration country.<sup>140</sup> As a rule, however, bilateral agreements contain more detailed provisions. They establish the principle of medical selection before departure from the country of origin and specify which authorities are to be responsible for it. In many cases, they also provide that medical selection shall be preceded by preselection by the competent authorities of the emigration country.

(ii) Health inspection on arrival

138. Most of the governments which have supplied information on this matter indicate that health inspections of migrant workers and members of their families are carried out in accordance with the legislation concerning immigration. In some countries,<sup>141</sup> medical examinations are compulsory; in others,<sup>142</sup> it is left to the

immigration official, assisted by a medical officer, to decide whether such examinations are necessary. In some cases, the legislation provides that medical examinations must take place as soon as possible after the arrival of the immigrants.<sup>143</sup> One government specifies that, as a rule, such examinations take place within a fortnight of the arrival of a foreigner.<sup>144</sup>

139. The immigration legislation of one country,<sup>145</sup> which makes a distinction between immigrants, i.e. persons who wish to settle permanently, and visitors, i.e. persons granted temporary admission, provides for compulsory medical examinations for all immigrants and certain prescribed categories of visitors, including persons who wish to take a job for more than three months and persons who have been living in areas presenting a high risk of contagious disease and who request permission to stay for the same length of time. In principle, neither Article 5 nor the other provisions of the Convention provide for any difference in treatment between permanent and temporary migrants. However, since paragraph (a) of Article 5 of the Convention provides that health inspections shall be carried out "where necessary", the provisions of the above-mentioned legislation which restrict medical examinations to certain categories of visitors may, because of the guarantees they include, be regarded as meeting the obligations of the Convention.

140. As indicated in paragraph 136, some countries have instituted health inspection in the country of origin, but usually only as a preliminary measure. As one government<sup>146</sup> indicates, inspections carried out on arrival are often simplified, since the authorities reserve the right to demand a complete medical examination as occasion requires. According to the information received,<sup>147</sup> however, it seems that medical examinations in the country of origin are not always followed by examinations in the country of destination. In principle, paragraph (a) of Article 5 of Convention No. 97, requires health inspection on arrival as well, but this provision was adopted at a time when migrants were mainly transported by sea, which perforce entailed long journeys during which migrants' health might deteriorate. With the development of transport and particularly of air transport, short journeys are often the rule. Thus, where migrants undergo health inspection in their country of origin, a medical examination in the country of destination would not seem necessary in all cases to ensure the protection provided for by the Convention. However, medical examinations both before departure and on arrival continue to be justified in the case of long journeys, such as the rare cases of transoceanic migration in ships, or when the authorities of the receiving country have particular reasons to doubt the quality of the examinations carried out in the migrants' country of origin. In any event, this interpretation seems to be authorised by the intentionally flexible wording of Article 5(a) of Convention No. 97.

141. In some countries,<sup>148</sup> migrants may not be granted work permits unless they have undergone medical examinations to establish that they are fit to work. Where no provision is made for medical examination of the members of their families authorised to accompany or join the workers, the application of Article 5(a) of the Convention will raise problems. However, this will not necessarily be so in cases where appropriate medical examinations are carried out in the migrants' country of origin. In this respect, one government<sup>149</sup> indicates that members of the families of migrant workers are not authorised to enter the country unless they produce a certificate to the effect that they are not suffering from infectious diseases.

(iii) Medical attention

142. Such attention is provided for by Article 5(b) of Convention No. 97.

143. The subject of medical attention during the journey was examined in connection with measures taken to facilitate the journey of migrants. (See paragraphs 111 to 115 above.)

144. Medical attention at the time of departure and on arrival seems to be assured by the medical services provided for the population at large, for many governments have specified that these services are also accessible to migrants.<sup>150</sup>

145. Moreover, several governments have indicated that they have taken special measures for migrants. Thus, in one country,<sup>151</sup> there are dispensaries in the principal ports of entry for the treatment of minor ailments. In another country,<sup>152</sup> the General Emigration Directorate is entrusted with functions analogous to those mentioned in Article 5(b) of the Convention. In still other countries,<sup>153</sup> the centres in which migrants assemble before leaving the country are inspected.

Transfer of funds

146. In accordance with Article 9 of Convention No. 97, States must undertake "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".

147. This provision is fairly flexibly worded so as not to give rise to difficulties in its application. Some governments indicate that the provision is applied in practice,<sup>154</sup> others that there is no exchange control and that the transfer of capital is consequently permitted,<sup>155</sup> and still others that the transfer of earnings and savings is authorised within the limits allowed by national legislation.<sup>156</sup>

Exemption from customs duties

148. Annex III to Convention No. 97 provides for personal effects, handtools and equipment belonging to migrant workers and members of their families to be exempt from customs duties. Article 1 of Annex III provides for exemption from customs duties on arrival in the territory of immigration and Article 2 for exemption from such duties on the return of the migrants to their country of origin, provided they have retained the nationality of that country. All the migrants' personal effects must be exempt from customs duties, but their handtools and equipment are exempt from such duties only on certain conditions in order to avoid abuses. First, exemption is confined to portable handtools and portable equipment "of the kind normally owned by workers for the carrying out of their particular trade". Secondly, tools and equipment belonging to migrants must be shown "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".

149. For the governments which did not exclude the provisions of Annex III when they ratified Convention No. 97, this matter has not

raised any difficulties. However, few other governments have supplied any information on it.

150. One government,<sup>157</sup> states that its customs regulations permit the duty-free import of passengers' personal effects, including the handtools and instruments they need for carrying out their trades. Another government<sup>158</sup> indicates that foreign workers entering under special establishment and settlement programmes are exempted from payment of the customs duties levied on the import of tools, instruments and protective equipment, etc., and that the authorities are thinking of extending this privilege to all foreign workers.

151. Moreover, according to the information supplied by one government,<sup>159</sup> its nationals returning to the country are exempted from customs duties on their personal belongings, their furniture, their machines and their scientific equipment. In another country,<sup>160</sup> labour legislation provides for similar exemptions from customs duties in the event of repatriation of workers.

## 2. Recruitment

152. Articles 2, 3 and 4 of Annexes I and II to Convention No. 97 define and regulate the recruitment, introduction and placing of migrant workers where these operations are authorised by national legislation. The main purpose of these Articles is to protect migrant workers, while facilitating the control of recruitment and the suppression of clandestine hiring. As already mentioned, Annex II to the Convention applies to migrants for employment recruited under government-sponsored arrangements for group transfer, while Annex I applies to other forms of recruitment. Nevertheless, since the provisions of these two annexes as regards recruitment are similar, the two aspects of the question will be examined simultaneously.

### (a) Definitions

153. Article 2 of Annexes I and II makes a distinction between the recruitment, the introduction and the placing of migrant workers. These expressions are defined in identical terms by the two annexes. However, in order to take account of their respective fields of application, Article 2 of Annex II also specifies, in clauses (a), (b) and (c), that the recruitment, introduction and placing operations covered by these clauses are carried out "under a government-sponsored arrangement for group transfer".

154. According to clause (a) of Article 2 of Annex I, 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.

155. According to this definition recruitment covers not only direct engagement by the employer or his representative, but also any operations conducted by an intermediary, whether he has a definite job to offer the worker or whether he undertakes to find him one. It also covers the operations accompanying the recruitment procedure, in particular selection operations.<sup>161</sup> The notion of recruitment is thus a very broad one.<sup>162</sup>

156. As regards the term "introduction", it means, according to clause (b) of Article 2 of Annex I, "any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited within the meaning of [clause] (a)". Finally, under clause (c) of the same Article, 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 [clause] (b)".

157. Although the legislation and bilateral or multilateral agreements regulating recruitment, introduction and placing operations do not always define these terms and, when they do so, use terms which are sometimes different from those of Convention No. 97 on the basis of the available information this does not appear to pose major problems in practice. Under legislation<sup>163</sup> which is inspired by the Recruiting of Indigenous Workers Convention, 1936 (No. 50), recruitment includes all operations undertaken with the object of obtaining or supplying the labour of persons who do not spontaneously offer their services at the place of employment or at a public emigration or employment office or at an office conducted by an employers' organisation and supervised by the competent authority. If this legislation is in effect applicable to recruitment operations conducted by all private employment agencies other than those run by employers' organisations under the supervision of the competent authority, the definition used is compatible with that given in Article 2 of Annexes I and II.

(b) Recruitment machinery

158. Article 3 of Annex I and Article 3 of Annex II lay down the principle of the intervention of public employment offices or other official bodies in each of the operations of recruitment, introduction and placing. They nevertheless authorise recruitment by the employer himself or by his representative, or by private agencies, subject to the supervision of the competent authority.

Official recruiting bodies

159. Under Article 3, paragraph 2, of Annex I and Article 3, paragraph 2, of Annex II the official bodies authorised to engage in the operations of recruitment, introduction and placement are those of the territory in which the operations take place (clause (a)), those 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 (clause (b)), or any body established in accordance with the terms of an international instrument (clause (c)).

160. In certain countries of emigration<sup>164</sup> the recruitment of workers is often the responsibility of the public employment services. Recruitment may also be conducted by specialised bodies,<sup>165</sup> such as the emigration services, which sometimes act in co-operation with the employment services.

161. Introduction and placement operations are also carried out in a number of cases by the official bodies of the country of employment. One government<sup>166</sup> states in this connection that, subject to international agreements, the National Immigration Office is the only body authorised to recruit foreign workers and to introduce them into the country. In addition, in a number of countries, particularly in Europe,<sup>167</sup> the recruitment of foreign workers for placement in a country is the responsibility of the national employment service, which may delegate its powers under very strict conditions. Likewise, in certain African countries<sup>168</sup> the manpower services are entrusted with the operations of introducing foreign labour.

162. Many bilateral agreements<sup>169</sup> regulating the recruitment of workers make provision for the co-operation of the official services of the countries concerned. This is also the case with certain agreements concluded at subregional level.<sup>170</sup> Generally speaking, the procedure is as follows:<sup>171</sup> the competent authorities of the country of immigration transmit offers of employment from employers to the competent services of the country of emigration appointed for this purpose. These services publish the offers and carry out the medical and occupational selection of the workers, usually in co-operation with the authorities of the country of employment, which may in certain cases delegate their powers to the representatives of employers or their associations. The selection made by the services of the country of emigration is more often than not of a preliminary nature, being supervised according to circumstances either by a mixed commission<sup>172</sup> or by the competent services of the country of employment<sup>173</sup> or by persons appointed for this purpose. Certain agreements<sup>174</sup> provide that employers or their associations may make contact with the selected workers before taking a final decision.

163. As is shown by the preparatory work, recruitment and selection operations by the official services of the countries of immigration should not be authorised in the absence of an arrangement between governments.<sup>175</sup> It is not necessary, however, for a bilateral or multilateral Convention or formal agreement to exist for this purpose.<sup>176</sup>

164. Certain governments in Europe and Latin America state that recruitment operations are carried out with the assistance of the Inter-Governmental Committee for European Migration. In this connection one government<sup>177</sup> refers to the conclusion of agreements with this body for the purposes of promoting selective emigration. Under these agreements ICEM is to conduct all operations relating to the recruitment, selection, transport, placement and integration of workers whose qualifications meet the needs of the country's economy.

165. Article 4 of Annex I and Article 4, paragraph 1, of Annex II provide that the services rendered by public employment services in connection with the recruitment, introduction or placing of migrants for employment are free. Compliance with this obligation, which is also prescribed in more general terms by Article 7 of Convention No. 97, would not appear to raise difficulties in practice, according to the information available.

#### Private bodies

166. Recruitment by the employer himself or by his representative, or by private agencies, is authorised under Article 3 of Annex I and Article 3 of Annex II, in so far as national laws and regulations

or bilateral or multilateral arrangements permit. However, in order to avoid the possibility of abuse by intermediaries, these provisions require that the right to engage in the operations of recruitment, introduction and placing shall be subject to the approval and supervision of the competent authority. In this connection Article 3, paragraph 3, of Annex I makes a distinction between recruitment by the employer or his representative, which may be authorised "subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority" (clause (a)), and the activities of private agencies, which must obtain prior authorisation from the "competent authority of the territory where the said operations are to take place" (clause (b)). Operations conducted by private agencies must also be subject to the supervision of the competent authority of that territory (Article 3, paragraph 4). The provisions of Annex II, although worded somewhat differently, have a similar purpose.

167. The provisions of Annexes I and II respecting recruitment by private bodies were conceived in the same spirit as those of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96),<sup>178</sup> which specifies that fee-charging employment agencies, whether conducted with a view to profit<sup>179</sup> or otherwise,<sup>180</sup> must obtain authorisation to place or recruit workers abroad. It should, however, be noted that the above-mentioned provisions of Annexes I and II to Convention No. 97 apply not only to fee-charging employment agencies but also to private bodies whose operations are conducted free of charge.

168. As mentioned above, recruitment, introduction and placing operations often lie within the competence of public services. Depending on the circumstances, these may have a monopoly;<sup>181</sup> in other cases<sup>182</sup> the public body is empowered to delegate its responsibility provided that certain conditions are fulfilled. In certain countries only the employers or their associations may be authorised to engage in such activities.<sup>183</sup> However, the reports communicated by governments do not always make it possible to determine whether, and to what extent, the public services do in fact delegate their powers as regards recruitment.

169. When recruitment, introduction or placement operations are not carried out by the public services, a number of measures have been taken to protect emigrants. In a number of countries<sup>184</sup> special regulations have been adopted under which any person or body recruiting workers for employment abroad must obtain a licence. A similar obligation is sometimes provided for under labour legislation, either in connection with the recruitment of national workers for employment abroad<sup>185</sup> or for the introduction of foreign workers into the country and their placement.<sup>186</sup> In other countries<sup>186bis</sup> the legislation regulating the operations of placement agencies provides that agencies which wish either to place or to recruit workers abroad must obtain authorisation for this purpose. In certain cases<sup>187</sup> such activities are prohibited if they are remunerated.

170. Some of the countries which refer to the legislation on placement agencies mention certain difficulties. One government<sup>188</sup> states that the Fee-Charging Employment Agencies Act does not give proper coverage to collective immigrations of workers and that new legislation is in preparation. Another government<sup>189</sup> states that the regulations on employment agencies do not apply to those which deal exclusively with the introduction of domestic workers; according to the government the recruitment and employment of this category of workers are, however, the subject of contacts with the diplomatic

services of a country belonging to the same region. It should be recalled here that neither the Convention nor its annexes authorise exceptions as regards domestic workers, who are often particularly vulnerable and have greater difficulties in defending their interests. In another country<sup>190</sup> the authorisation necessary for the recruitment or placement of workers abroad is not required when such operations are occasional or free of charge. This latter situation is also likely to arise in countries where the legislation regulates only fee-charging employment agencies. As already mentioned, the provisions of Annexes I and II which regulate the recruitment, introduction and placement of migrants for employment by private agencies are applicable to operations conducted free of charge and provide for no exemptions in respect of persons or bodies acting on an occasional basis. Experience has, in fact, shown that trafficking in manpower has frequently been organised by persons operating in this manner.

171. When private bodies, and particularly employment agencies, conduct their activities at national or international level, it is important, if the provisions of Annexes I and II respecting recruitment are to be effectively applied, that recruitment, introduction and placement operations involving international migrations of workers should be subject to special authorisation distinct from that granted for placement operations carried on solely within the country. Although this requirement is met in most cases, the licensing system in some countries<sup>190bis</sup> makes no distinction between operations carried on inside a country and those of an international nature. This would appear to be the case, in particular, with legislation<sup>191</sup> inspired by the Recruiting of Indigenous Workers Convention, 1936 (No. 50). However, given the guarantees by which the recruitment procedure is covered in this legislation, and the fact that each worker recruited must be presented to the competent authority before his departure, the objectives of the Convention as regards recruitment may be considered as met. The same applies to certain regulations covering employment agencies<sup>192</sup> which, although they do not make recruitment of foreign workers for their placement in the country subject to a special authorisation as distinct from a general licence, nevertheless seem to enable these activities to be adequately supervised.

172. In principle, authorisation is issued to recruiting bodies for a certain period, generally a year, or, more rarely,<sup>193</sup> for a quota of workers fixed in advance. The legislation of certain countries,<sup>194</sup> where there is no general licensing system, authorises the recruitment of workers for employment abroad only after an examination of each individual case by the competent authority and in so far as certain conditions are fulfilled, including the conclusion of an employment contract, the existence of a representative in the country of emigration, the deposit of a security, etc.

173. Although the reports of governments are not very explicit on this point, it appears that the legislation of most countries provides for supervision by the public authorities of the activities of private agencies which are authorised to engage in the recruitment of national workers for employment abroad or the introduction and placement of foreign workers. Generally speaking, authorisations for such activities are granted to private bodies only after the applicants have supplied certain information relating to their persons and activities.<sup>195</sup> In addition, certain conditions must also be fulfilled by the applicant: good morals, no police record, enjoyment of civic rights, solvency, etc. The legislation sometimes restricts the right to engage in recruitment operations to nationals<sup>196</sup> or requires the appointment of a representative of the recruiting agent or the employer



in the country of emigration.<sup>197</sup> Moreover, in a number of cases<sup>198</sup> the private body may be required to deposit a security as a guarantee that it will fulfil its obligations.

174. When the authorisation or licence is granted, recruitment or placement bodies are subject to various obligations which differ according to the country concerned and which may even take the form of formal codes of conduct.<sup>199</sup> Violation of these obligations may result in administrative or penal sanctions and withdrawal of the licence. Thus, in a number of cases,<sup>200</sup> the maximum amount of the fees which may be charged by private agencies is regulated by tariffs. The legislation of certain countries<sup>201</sup> regulates the means used by these agencies to look for workers, particularly as regards information. Moreover, the recruitment or placement bodies may also be obliged to observe certain minimum standards, fixed by the competent authority, when engaging migrants for employment.<sup>202</sup> Finally, the staff of private agencies may also be subject to certain regulations, in that they must either meet certain general conditions (proper conduct, etc.),<sup>203</sup> or be approved by the competent authority.<sup>204</sup>

175. In order to facilitate supervision of the activities of private bodies the legislation of certain countries<sup>205</sup> provides for the submission of periodical reports on activities to the competent authority, and the compulsory keeping of registers and other documents containing the information necessary for supervision. Supervision by the public authorities is strengthened when a special permit is required for each worker recruited in addition to the general authorisation to conduct recruitment operations for a specified period. In some countries, as has been seen, the special permits may even replace the system of general authorisation. This procedure is in force mainly in countries<sup>206</sup> where the recruited worker must be presented to the competent authority before his departure or when the proposed contract of employment must be approved before the worker can be allowed to leave the country. In certain cases<sup>207</sup> the recruitment bodies must also submit offers of employment from abroad to the competent authority.

176. A number of governments mention the direct participation of employers in the recruitment process. It is generally fairly unusual for employers to visit the country of emigration to recruit workers themselves; this practice is sometimes expressly prohibited by the legislation of the worker's country of origin.<sup>208</sup> It is far more frequent for the employer to carry out the introduction and placement of foreign workers directly, as prescribed by Article 2(b) and (c) of Annexes I and II. It should be recalled here that, although the provisions of these annexes do not require the employer to obtain previous authorisation before commencing such operations, they are nevertheless subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority (Article 3, paragraph 3(a), of Annex I and Article 3, paragraph 3(a), of Annex II). These provisions assimilate operations undertaken by persons "in the service of the prospective employer and acting on his behalf" to operations undertaken by the employer himself. In this connection certain countries of immigration<sup>209</sup> state that, although employers may undertake recruitment and selection operations, the final decision in this regard lies with the immigration service. In many countries, in fact, the system whereby work or employment permits are issued, in some cases before the arrival of the worker, should make it possible to ensure the supervision of operations carried on by the employers, even if governments<sup>210</sup> do not in principle intervene in the actual selection of workers. The legislation of some countries,<sup>211</sup> moreover, contains

express stipulations making the issue of the work or the employment permit conditional upon the observance by the employer of his obligations under the laws and regulations respecting living or working conditions.

177. As has been seen, a number of bilateral agreements provide that employers or their associations may take part in the recruitment process. In most cases they do so under the supervision of the public authorities, whether selection by the employers must be made in co-operation with the official services of the countries of emigration,<sup>212</sup> or medical and occupational preselection of workers must be carried out exclusively by these services.<sup>213</sup>

178. As can be seen from the foregoing paragraphs, most of the national and international legal provisions that it has been possible to examine generally respect the provisions of the annexes to Convention No. 97. But, beyond these formal texts, special importance is attached to practice in this field. However, few governments have supplied detailed information on the measures taken to secure the observance of their recruitment legislation or on the way in which private bodies authorised to undertake recruitment, introduction and placement operations are actually supervised. The absence of information on these points is the more regrettable in that many suppliers of clandestine labour carry on their activities in contravention of the provisions of the law regarding recruitment.

#### Notes to Chapter II

<sup>1</sup> For instance, Cyprus (Migration Department of the Ministry of the Interior), Egypt (Emigration Authority); Philippines (Office of Emigrant Affairs); Portugal (Department of Emigration).

<sup>2</sup> For instance, France (National Immigration Office); Singapore (Department of Immigration); Uruguay (Immigrant Information, Reception and Assistance Service of the Department of Migration).

<sup>3</sup> For instance, as regards intending emigrants: Guyana (Employment Service); Mauritius (Employment Service); Switzerland (Federal Office of Industry, Arts and Crafts and Labour); Tunisia (Office for Tunisian Workers Abroad, Employment and Vocational Training); Yugoslavia (employment service); and, as regards immigrants: Belgium (National Employment Office); Malawi (Ministry of Labour); Norway (Employment Service); Sudan (Department of Labour).

<sup>4</sup> Austria (the public authorities and organisations of employers and workers have jointly set up a "Foundation for the reception and orientation of persons migrating to Vienna", responsible for the reception and guidance of foreign workers); Luxembourg (the Immigration Service, which is responsible for social work on behalf of migrant workers, is a department of the Ministry of Family Affairs and Social Assistance; section 1 of the Act of 24 July 1972 concerning social work on behalf of immigrants).

<sup>5</sup> For instance, Australia and Canada.

<sup>6</sup> Switzerland.

<sup>7</sup> Argentina (Migration Bill).

<sup>8</sup> This is the case as regards Belgium.

<sup>9</sup> For instance, Australia, Canada and New Zealand.

<sup>10</sup> France.

<sup>11</sup> Netherlands.

<sup>12</sup> The importance of this principle is also established by Article 1 of Convention No. 97, which provides that "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."

<sup>13</sup> For instance, agreement between Belgium and Morocco on the employment of Moroccan workers in Belgium of 17 February 1964; agreement between Luxembourg and Portugal on the employment of Portuguese workers in Luxembourg of 1 July 1970.

<sup>14</sup> Switzerland (Act of 22 May 1888 concerning the operations of emigration agencies, section 25).

<sup>15</sup> This is the case as regards Belgium.

<sup>16</sup> For instance, Austria (the report indicates that Caritas-Austria's expenditure on activities to benefit foreign workers amounted to 1.1 million schillings); Italy. Non-Metropolitan Territory: United Kingdom (Hong Kong).

<sup>17</sup> Federal Republic of Germany.

<sup>18</sup> France.

<sup>19</sup> Canada.

<sup>20</sup> Egypt.

<sup>21</sup> Yugoslavia.

<sup>22</sup> France.

<sup>23</sup> Austria (see also note 4 to this chapter).

<sup>24</sup> Norway.

<sup>25</sup> For instance, the Australian Government's report mentions that the information services in the various states are able to give information to migrants in several languages. The Canadian Government indicates that information is generally given in the migrants' languages. In France, according to the information supplied by the Government, most of the agents of the national reception services speak another language.

<sup>26</sup> For instance, Australia, Canada, Federal Republic of Germany, Norway, Sweden, Switzerland and the United Kingdom.

<sup>27</sup> Norway and Sweden.

<sup>28</sup> For instance, Italy and Switzerland.

<sup>29</sup> For instance, Australia, Austria, Canada, Norway Philippines, United Kingdom and Upper Volta.

<sup>30</sup> Article 1 of Convention No. 66 provides that "Each Member of the International Labour Organisation which ratifies this Convention undertakes that it will:

(a) enact and enforce penalties for the repression of -

(i) misleading propaganda relating to emigration or immigration; and

(ii) propaganda relating to emigration or immigration which propaganda is contrary to national laws or regulations; and

(b) exercise supervision over advertisements, posters, pamphlets and other forms of publicity relating to employment in one territory which is offered to persons in another territory."

<sup>31</sup> In this connection, see ILC, 32nd Session, Geneva, 1949, Report XI(2), p. 147.

<sup>32</sup> Federal Republic of Germany (section 1 of the Act concerning the protection of emigrants of 1975; by virtue of section 6(2), violations of the Act are punishable with a fine of up to 40,000 marks).

<sup>33</sup> Norway (Employment Promotion Act No. 9 of 27 June 1947, section 28).

<sup>34</sup> Cyprus.

<sup>35</sup> For instance, Kenya (Employment Act of 1976, section 21); Malawi (Employment Ordinance of 1964, sections 12 and 13); Malaysia (Sarawak) (Employment Ordinance of 1952, sections 21(2) and 32); Zambia (Employment Act of 1965, section 32). Non-Metropolitan Territory: United Kingdom (Brunei) (Labour Act of 1954, section 20).

<sup>36</sup> For instance, Guyana (Act concerning the recruitment of workers of 1943, section 6); Malawi (Employment Ordinance of 1964, section 30); Malaysia (Sarawak) (Employment Ordinance of 1952, section 50, paragraph 2).

<sup>37</sup> For instance, Guatemala (section 35 of the Labour Code).

<sup>38</sup> For instance, El Salvador (Decree No. 455 of 27 November 1963 for the enactment of organic legislation, of the Ministry of Labour and Social Welfare, section 69).

<sup>39</sup> For instance, Kenya (Employment Act of 1976, section 23); Zambia (Employment Act of 1965, section 39).

<sup>40</sup> For instance, Barbados (Emigration Act of 1904, section 2); Federal Republic of Germany (Penal Code, section 144); India

(Emigration Act of 1922, section 26); Pakistan (Emigration Ordinance of 1979, section 18).

\*1 Switzerland (Enforcement decree of the Act of 22 March 1888 concerning the operations of emigration agencies, section 42).

\*2 For instance, Federal Republic of Germany (Act of 26 March 1975 concerning the protection of emigrants, section 2(1)).

\*3 Switzerland.

\*4 Canada (Immigration Act of 1976, section 95(j)).

\*5 Luxembourg.

\*6 Canada.

\*7 For instance, Botswana (Employment Act of 1963, sections 27 and 45); Colombia (Labour Code, section 72); Congo (Labour Code, section 33); El Salvador (Decree No. 455 of 27 November 1963 for the enactment of organic legislation of the Ministry of Labour and Social Welfare, section 69); Fiji (Employment Act of 1975, section 32); Guatemala (Labour Code, section 34); Kenya (Employment Act of 1976, sections 19 and 23); Malawi (Employment Ordinance of 1964, sections 12 and 13); Mexico (Federal Labour Act of 1969, section 28); Morocco (Decree of 8 November 1949 enacting regulations governing the emigration of Moroccan workers, section 4); Nigeria (Labour Decree, 1974, section 38); Pakistan (Emigration Regulations of 1979, regulations 20, 21, 22 and 25); Trinidad and Tobago (Act concerning labour contracts for employment abroad, section 7); Zambia (Employment Act of 1965, sections 28 and 32). Non-Metropolitan Territories: United Kingdom (Hong Kong) (Ordinance concerning contracts for employment abroad, section 6); (Montserrat) (Protection of Emigrants Act, section 10).

\*8 For instance, France (Labour Code, section L341-2); Madagascar (Labour Code, section 25); Mali (Labour Code, section 24); Niger (Labour Code, section 31); Tunisia (Labour Code, section 258).

\*9 For instance, emigration agreement between Belgium and Spain of 28 November 1956; agreement between Belgium and Greece on the emigration of Greek workers to Belgium for employment in the collieries, of 12 July 1957, agreement between Belgium and Morocco on the employment of Moroccan workers in Belgium, of 17 February 1964; agreement between Belgium and Turkey on the employment of Turkish workers in Belgium, of 16 July 1964; manpower co-operation agreement between Gabon and United Republic of Cameroon, of 9 August 1974. Agreement between Switzerland and Italy on the emigration of Italian workers to Switzerland, of 10 August 1964; agreement between Switzerland and Spain on the engagement of Spanish workers for employment in Switzerland, of 2 March 1961. Agreement between the Federal Republic of Germany and Yugoslavia governing the recruitment and employment of Yugoslav workers in the Federal Republic of Germany, of 12 October 1968; agreement between Austria and Yugoslavia governing the employment of Yugoslav workers in Austria, of 19 November 1965; agreement between Luxembourg and Yugoslavia governing the employment of Yugoslav workers in Luxembourg, of 28 May 1970; agreement between France and Yugoslavia governing the employment of Yugoslav workers in France, of 25 January 1965; manpower agreement between France and Morocco, of 1 June 1963; agreement between the Netherlands and Morocco on the recruitment of Moroccan workers and their placement in the

Netherlands, of 14 May 1969; Convention between the Netherlands and Tunisia on the recruitment in Tunisia of Tunisian workers and their placement in the Netherlands of 8 March 1971.

<sup>50</sup> Andean instrument concerning migration for employment (article 8).

<sup>51</sup> For instance, the above-mentioned agreement between France and Yugoslavia (article 4); agreement between Luxembourg and Portugal on the employment of Portuguese workers in Luxembourg, of 20 May 1970 (article 3).

<sup>52</sup> For instance, the above-mentioned agreement between Switzerland and Italy (articles 3 and 4).

<sup>53</sup> For instance, the protocol on the application of article 2 of the agreement between Belgium and Italy on the employment and residence in Belgium of Italian workers and their families, of 11 July 1966.

<sup>54</sup> For instance, Colombia (Labour Code, section 72); Guatemala (Labour Code, section 34); Mexico (Federal Labour Act of 1969, section 28); Panama (Labour Code, section 99).

<sup>55</sup> With regard to France, the National Immigration Office, which, subject to international agreements, has the monopoly of the recruitment, introduction and reception of immigrant workers, issues employment contracts to workers in their country of origin through its missions abroad. The Government of Mali indicates in its report that an employment contract must be obtained before the introduction of a worker into the national territory.

<sup>56</sup> For instance, the above-mentioned agreement between Switzerland and Italy (articles 3 and 4).

<sup>57</sup> For instance, agreement between France and Morocco (annex concerning recruitment procedure, article 7).

<sup>58</sup> In this respect, see ILC, 32nd Session, Geneva, 1949, Report XI(2), pp. 76-77 and 162.

<sup>59</sup> For instance, Colombia (Labour Code, section 39); El Salvador (Decree No. 455 of 27 November 1963 for the enactment of organic legislation of the Ministry of Labour and Social Welfare, section 69 and Labour Code, section 23); Guatemala (Labour Code, sections 29 and 34); Malaysia (Sarawak) (Labour Ordinance of 1952, section 20); Mexico (Federal Labour Act of 1969, sections 25 and 28); Nigeria (Labour Decree, 1974, section 39).

<sup>60</sup> For instance, Trinidad and Tobago (Act concerning labour contracts for employment abroad, section 7 and Annex II). Non-Metropolitan Territory: United Kingdom (Montserrat) (Protection of Emigrants Act, section 10 and Annex III).

<sup>61</sup> For instance, Colombia (Labour Code, section 39); El Salvador (the above-mentioned Decree No. 455 of 27 November 1963, section 69, and Labour Code, section 23); Guatemala (Labour Code, sections 29 and 34); Malaysia (Sarawak) (Labour Ordinance, 1952, section 20); Mexico (Federal Labour Act, sections 25 and 28); Nigeria (Labour Decree, 1974, section 39) of 1969; Zambia (Employment Act of 1965, section 30).

<sup>62</sup> For instance, Colombia (Labour Code, section 39); Malaysia (Sarawak) (Labour Ordinance, 1952, section 20); Nigeria (Labour Decree, 1974, section 39).

<sup>63</sup> Guatemala (Labour Code, section 34); Nigeria (Labour 1974, section 39).

<sup>64</sup> Trinidad and Tobago (Annex II to the Act concerning labour contracts for employment abroad). Non-Metropolitan Territory: United Kingdom (Montserrat) (Annex III to the Protection of Emigrants Act).

<sup>65</sup> Malawi; Pakistan (the Government adds that contracts for employment abroad also contain provisions concerning medical care, free transport and repatriation of the worker and social security benefits.

<sup>66</sup> However, some bilateral agreements provide that the employment contract should follow the standard contract established by the legislation of the immigration country (for instance, the above-mentioned manpower agreement between France and Morocco, annex concerning recruitment procedure, article 7).

<sup>66bis</sup> The model contract appended to the agreement of 1966 between Haiti and the Dominican Republic on the recruitment in Haiti and entry into the Dominican Republic of Haitian temporary daily workers does not contain sufficiently precise provisions.

<sup>67</sup> For instance, the standard contracts appended to the above-mentioned bilateral manpower agreements Belgium has concluded with a number of countries; the employment contract appended to the above-mentioned manpower agreement between Austria and Yugoslavia; the contract appended to the above-mentioned agreement between Luxembourg and Portugal.

<sup>68</sup> For instance, most of the standard employment contracts appended to the above-mentioned agreements concluded by Belgium; the employment contract appended to the above-mentioned agreement between Austria and Yugoslavia.

<sup>69</sup> For instance, the employment contract appended to the above-mentioned agreement between Luxembourg and Portugal.

<sup>70</sup> For instance, the employment contract appended to the above-mentioned agreement between Austria and Yugoslavia.

<sup>71</sup> As is the case of the standard employment contract (article 4) appended to the 1966 agreement between Haiti and the Dominican Republic concerning the recruitment in Haiti and entry into the Dominican Republic of temporary Haitian day labourers.

<sup>72</sup> For instance, the standard employment contracts for workers employed in sectors other than the mines appended to the above-mentioned agreements Belgium has concluded with Morocco and Turkey.

<sup>73</sup> For instance, the standard employment contracts for workers employed in the collieries appended to the above-mentioned agreements Belgium has concluded with Spain, Greece, Morocco and Turkey; the employment contract appended to the above-mentioned agreement between Austria and Yugoslavia.

<sup>74</sup> The employment contract appended to the above-mentioned agreement between Luxembourg and Portugal.

<sup>75</sup> The above-mentioned agreements Yugoslavia has concluded with Austria (article 14), the Federal Republic of Germany (article 4) and Luxembourg (article 3). The above-mentioned agreement between Switzerland and Spain contains a similar provision.

76 Annex concerning recruitment procedure (article 8) to the above-mentioned agreement between Morocco and France.

77 For instance, the above-mentioned agreements between Luxembourg and Portugal (article 2); Belgium and Spain (article 3); Belgium and Greece (article 1).

78 India (Emigration Regulations of 1959, regulation 17).

79 Malawi.

80 For instance, Mauritius (section 3 of the Emigration Regulations of 1951 expressly provides that the competent authority should ascertain that the worker is aware of the general living conditions prevailing in the country of employment).

81 In this connection, see ILC, 32nd Session, Geneva, 1949, RP, p. 595.

82 For instance, El Salvador (the above-mentioned Decree No. 455 of 27 November 1963, section 69); Guatemala (Labour Code, section 34).

83 Morocco (Decree of 8 November 1949 introducing regulations governing the emigration of Moroccan workers, section 11).

84 For instance, Botswana (Employment Act of 1963, section 46); Kenya (Employment Act of 1976, section 23); Morocco (Decree of 8 November 1949 introducing regulations governing the emigration of Moroccan workers, section 10); Zambia (Employment Act of 1965, section 39).

85 For instance, Malawi (Employment Ordinance of 1964, section 12); Mexico (Federal Labour Act of 1969, section 886).

86 For instance, the above-mentioned agreements between Luxembourg and Portugal (article 5); Luxembourg and Yugoslavia (article 8); Belgium and Spain (article 5); Belgium and Tunisia (article IV); Belgium and Yugoslavia (article 4).

87 Canada.

88 For instance, Dominican Republic, Portugal and Venezuela.

89 Switzerland.

90 See ILC, 32nd Session, Geneva, 1949, RP, p. 569, paragraph 5.

91 Kenya.

92 Kuwait.

93 Finland.

94 Italy.

95 Upper Volta.

96 The above-mentioned agreement between Belgium and Morocco (article 3b).

97 The above-mentioned agreement between France and Morocco (article 6 of the annex concerning recruitment procedure).



98 Mauritius.

99 Portugal.

100 Italy.

101 Switzerland.

102 For instance, the above-mentioned agreements between Switzerland and Spain (article 17, paragraph 2) and Belgium and Turkey (article 3).

103 For instance, the above-mentioned agreement between France and Morocco (article 6).

104 Egypt.

105 Spain: Emigration Act No. 33 of 1971 (sections 17 and 18) and Order of 14 February 1972 concerning vocational training of emigrant workers.

106 Canada.

107 Spain: Emigration Act No. 33 of 1971 (section 36) and Decree No. 1094 of 1972 regulating the transport of emigrants.

108 Federal Republic of Germany (Act of 1975 concerning the protection of emigrants (section 4)).

109 Malawi, Mauritius, Zambia.

110 Spain (Order of 23 Dec. 1971).

111 For instance, United Republic of Cameroon (Act No. 77-11 of 13 July 1977 concerning compensation for and prevention of industrial accidents and occupational diseases (section 2)); Congo (Decree No. 57245 of 24 February 1957 concerning compensation for and prevention of industrial accidents and occupational diseases (section 2)); Gabon (Social Security Code, section 55).

112 Paragraph 24(b) of Recommendation No. 151 and Articles 6 of Annex I and 7 of Annex II of Convention No. 97 refer to assistance with regard to interpretation and administrative formalities.

113 Canada.

114 For instance, Belgium and France.

115 France.

116 Austria.

117 Australia.

118 The above-mentioned agreements between Luxembourg and Portugal (article 8); Belgium and Morocco (article 8); Belgium and Turkey (article 6); Belgium and Tunisia (article VIII).

119 For instance, the above-mentioned agreements between Luxembourg and Yugoslavia (article 10); France and Morocco (article 11 of the annex concerning recruitment procedure); Belgium and Spain (standard contract, article 1, para. 2).

120 Portugal.

121 For instance, Austria and France.

122 For instance, Canada.

123 For instance, Federal Republic of Germany.

124 This is the case, for instance, of the Employment Service of the city of Oslo (Norway).

125 Australia.

126 France.

127 Australia.

128 This is the case of, for instance, the following countries: Australia, Austria and Malaysia. In Luxembourg, the Immigration Service established by the Act of 24 July 1972 concerning social work on behalf of immigrants is empowered to set up and administer reception centres to give temporary accommodation to foreign workers.

129 For instance, Belgium and Canada.

130 Canada.

131 Colombia.

132 ILC, 32nd Session, Geneva, 1949, RP, p. 582

133 *ibid*, p. 582.

134 Portugal, Legislative Decree No. 763/1974 (section 5); Spain, Emigration Act No. 33 of 21 July 1971 (section 22) and Decree of 3 May 1962 (section 25).

135 Mauritius, Emigration Regulations of 1951 (section 3, para. 4) (according to information supplied by the Government, in practice, all migrants undergo a medical examination); Tanzania, Immigration Act of 1972 (section 5).

136 For instance, Botswana, Employment Act of 1963 (section 33); Kenya, Employment Act of 1976 (section 21); Malawi, Employment Ordinance of 1964 (section 13); Malaysia (Sarawak), Labour Ordinance of 1952 (section 21); Nigeria, Labour Decree of 1974 (section 38); Zambia, Employment Act of 1965 (section 32). Non-Metropolitan Territory: United Kingdom (Hong Kong) Ordinance concerning contracts for employment abroad (section 11).

137 For instance, Guyana, Recruitment Act of 1943 (section 6).

138 This is the case, for instance, of the following countries: Argentina, Australia and Canada.

139 France (the missions abroad of the National Immigration Office, which has the monopoly of recruitment by virtue of French legislation, carry out medical examinations of workers and members of their families).

140 For instance, the 1966 agreement between Haiti and the Dominican Republic concerning the recruitment in Haiti and entry into the Dominican Republic of temporary Haitian day labourers (article 3).

141 For instance, Luxembourg (section 21 of the Act of 28 March 1972 provides for compulsory medical examinations of foreigners who take up residence in Luxembourg).

142 For instance, Barbados, Regulations for the application of the Immigration Act of 1953 (section 5); Guyana, Regulations of the Immigration Act of 1947 (section 10); Singapore, Immigration Act (section 29); Tanzania, Immigration Act of 1972 (section 5); Zambia, Immigration and Deportation Act of 1965 (section 25).

143 For instance, Barbados and Guyana (see preceding note).

144 Luxembourg.

145 Canada, Immigration Regulations of 1976 (section 21).

146 Canada.

147 The Government of Czechoslovakia indicates that workers undergo a medical examination to prove their fitness for work in their country of origin.

148 Austria, Employment of Foreigners Act of 20 March 1975 (sections 4 and 5); United Republic of Cameroon, Labour Code (section 31); Gabon, Labour Code (section 25); Madagascar, Labour Code (section 25); Mali, Labour Code (section 24); Rwanda, Decree No. 23/06/03 of 23 October 1968 (section 5).

149 Austria.

150 For instance, Australia, Belgium, Czechoslovakia, Democratic Yemen, France, Israel, Jamaica, Kenya, Malawi, Norway, Portugal, Sudan, United Kingdom and Zambia.

151 Canada.

152 Portugal, Decree No. 763 of 1974 defining the powers and functions of the Department of Emigration.

153 For instance, Malawi and Zambia.

154 For instance, Australia, Colombia, Dominican Republic, Lebanon and Switzerland.

155 For instance, Canada, Singapore. Non-Metropolitan Territory: United Kingdom (Hong Kong).

156 For instance, Mali.

157 Australia.

158 Argentina (Decree No. 464/77).

159 Egypt.

160 Nigeria, Labour Decree of 1974 (section 42).

161 The regulation of selection operations is also the subject of similar provisions in Recommendation No. 86 (Paragraph 14(2) to (4)).

162 Nevertheless, a letter of engagement addressed by an employer to a worker in another country should not be considered to come under

this definition; see the preparatory work on the Migration for Employment Convention, 1939 (No. 66), Article 3, paragraph 1(a) of which contains a similar definition of recruitment operations. ILC, 25th Session, Geneva, 1939, RE, Appendix VIII, p. 503.

163 For example Bahamas (Recruiting of Workers Act, section 2); Botswana (Employment Law, 1963, section 89); Trinidad and Tobago (Recruiting of Workers Ordinance, section 2); Non-metropolitan territories: United Kingdom (Brunei) (Labour Enactment, 1954, section 2); (Montserrat) (Recruiting of Workers Act, 1941, section 2); (St. Christopher-Nevis-Anguilla) (Recruiting of Workers Ordinance, 1941, section 2).

164 This is the case, for example, in the following countries: Finland, Mauritius, Philippines, Tunisia (Office for Tunisian Workers Abroad, Employment and Vocational Training), Yugoslavia.

165 For example India (Foreign Assignment Section of the Department of Personnel and Administrative Reform, for highly qualified workers); Portugal (Directorate of Emigration Services in co-operation with the employment services, Legislative Decree No. 763 of 1974, section 5(b)); Spain (under section 20, subsection 2, of Act No. 33 of 1971 respecting emigration the Spanish Emigration Institute regulates and is responsible for operations connected with recruitment).

166 France (Labour Code, section L 341-9).

167 For example Federal Republic of Germany (Employment Promotion Act, 1969, section 18); Luxembourg (Act respecting the organisation and operation of the employment administration, 1976, section 16).

168 For example Madagascar (Labour Code, section 125); Niger (Labour Code, section 170); Senegal (Decree No. 62-0146 of 1962 to organise a manpower service, section 31).

169 For example agreement between Canada and Mexico concerning the admission of Mexican seasonal agricultural workers to Canada; agreement between the Netherlands and Spain of 8 April 1961 on the migration, recruitment and placement of Spanish workers for employment in the Netherlands. This is also the case with most of the agreements mentioned in note 49.

170 Andean instrument respecting migration for employment.

171 These considerations apply only to anonymous recruitment as opposed to recruitment of named workers.

172 For example the agreement between Austria and Yugoslavia mentioned above; the agreements between France and Yugoslavia mentioned above; and the agreement between the Federal Republic of Germany and Yugoslavia mentioned above.

173 For example the Convention between Belgium and Morocco mentioned above; the Convention between Belgium and Turkey mentioned above; the Convention between the Netherlands and Morocco mentioned above; the agreement between the Netherlands and Spain mentioned above; the Convention between the Netherlands and Tunisia mentioned above.

174 For example the agreement between Switzerland and Italy mentioned above; the agreement between Switzerland and Spain mentioned above.

175 ILC, 32nd Session, Geneva, 1949, RP, Appendix XIII, p. 592.

176 This is the case, for example, in Canada.

177 Venezuela.

178 States ratifying the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), may accept either the provisions of Part II concerning the progressive abolition of fee-charging employment agencies conducted with a view to profit and regulation of other agencies, or those of Part III concerning the regulation of fee-charging employment agencies.

179 Convention No. 96, Part II, Article 5(d); Part III, Article 10(d).

180 Convention No. 96, Part II, Article 6(c); Part III, Article 11(c).

181 This is the case in particular in France, as regards the general scheme (Labour Code, section L 341-9, subsection 2); Tunisia.

182 This is the case, for example, in the following countries: Federal Republic of Germany, Luxembourg, Spain.

183 Luxembourg (Act respecting the organisation and operation of the labour administration, 1976, section 16, subsection 2).

184 For example Indonesia (Regulation No. 4 of 1970 respecting the recruitment of labour, section 2); Pakistan (Emigration Ordinance, 1979); Trinidad and Tobago (Foreign Labour Contracts Ordinance); Non-metropolitan territory: United Kingdom (Montserrat) (Emigrants' Protection Act).

185 Nigeria (Labour Decree, 1974, Chapter II, section 24).

185<sup>bis</sup> Bahrain (Labour Law for the Private Sector of 1976, section 15, and Order No. 17 of 1976, section 1).

186 Brazil (Decree No. 62756, 1968, section 5); Finland (Placement Act, 1959, section 17); Philippines (Labour Code, Book I, Title I); Singapore (Employment Agency Ordinance, 1958, and regulations for its application, section 12); Sri Lanka (Fee-Charging Employment Agencies Act, 1956, section 8); Switzerland (Act respecting the employment service, 1951, section 10); Non-metropolitan territory: United Kingdom (Hong Kong) (Employment Ordinance, 1968, sections 50 ff., and Employment Agency Regulations, 1974).

187 For example, Belgium (Order of 20 July 1967, as amended, section 17 bis); Kuwait (Act respecting work in the private sector, 1964, section 11); Uruguay (Decree No. 384/979 of 1979, section 15).

188 Sri Lanka.

189 Non-metropolitan territory: United Kingdom (Hong Kong) (Employment Ordinance, 1968, section 50, subsection 3(d)).

190 Switzerland (Act respecting the employment service, 1951, section 10).

190<sup>bis</sup> For example, Saudi Arabia (Labour Code, section 40).

<sup>191</sup> For example Botswana (Employment Law, 1963, sections 88 ff.); Malaysia (Sarawak) (Labour Ordinance, 1952, sections 45 ff.); Non-metropolitan territory: United Kingdom (Montserrat) (Recruiting of Workers Act, section 5).

<sup>192</sup> For example, non-metropolitan territory: United Kingdom (Hong Kong) (Employment Agency Regulations, 1974, section 4, subsection 1).

<sup>193</sup> Nigeria (Labour Decree, 1974, section 23).

<sup>194</sup> For example El Salvador (Decree No. 455 of 1963 to reorganise the Ministry of Labour and Social Welfare, section 69); Guatemala (Labour Code, section 34); Panama (Labour Code, section 98).

<sup>195</sup> For example Pakistan (Emigration Rules, 1979, Annex 2: persons applying for a licence must provide information on their experience of placement, their financial situation, their business relations abroad, etc.); Singapore (Employment Agency Regulations, 1958, Annex 1, form B).

<sup>196</sup> For example Philippines (Labour Code, section 27); Switzerland (Act respecting the employment service, 1951; under section 7, subsection 2, a person in charge of an employment agency must be of Swiss nationality and have his domicile in Switzerland).

<sup>197</sup> For example Guatemala (Labour Code, section 34).

<sup>198</sup> For example Botswana (Employment Law, 1963, section 93); Guatemala (Labour Code, section 34); Malaysia (Sarawak) (Labour Ordinance, 1952, section 47); Nigeria (Labour Decree, 1974, sections 23 and 24); Pakistan (Emigration Ordinance, 1979, section 12); Philippines (Labour Code, section 31); Switzerland (Act respecting the employment service, 1951, sections 7 and 8).

<sup>199</sup> For example Pakistan (Emigration Rules, 1979, section 25); Philippines (Labour Code, section 34).

<sup>200</sup> For example Philippines (Labour Code, section 32); Singapore (Employment Agency Regulations, 1958, Annex 2); Switzerland (Act respecting the employment service, 1951, section 8, subsection 2); Non-metropolitan territory: United Kingdom (Hong Kong) (Employment Agency Regulations, 1974, section 10).

<sup>201</sup> For example Indonesia (Ministerial Regulation No. 4 of 1970 respecting the recruitment of labour, section 3); Pakistan (Emigration Rules, 1979, section 25(viii)); Philippines (Labour Code, section 34(b)).

<sup>202</sup> For example Pakistan (Emigration Rules, 1979, section 25(v)).

<sup>203</sup> For example Switzerland (Act respecting the employment service, 1951, section 7, subsection 5: the employees of an employment office must, among other things, be in possession of their civic rights and of good reputation).

<sup>204</sup> For example Botswana (Employment Law, 1963, section 92); Nigeria (Labour Decree, 1974, section 26, subsection 2).

<sup>205</sup> For example Nigeria (Labour Decree, 1974, section 26, subsection 1); Pakistan (the Emigration Ordinance of 1979 refers on

this point to the rules for its application); Singapore (Employment Agency Ordinance, 1958, sections 10 and 11); Switzerland (Act respecting the employment service, 1951, section 9).

<sup>206</sup> For example Botswana (Employment Law, 1963, Title IV, in particular sections 33 and 45, and Title VIII, in particular section 88); Guatemala (Labour Code, section 34); Nigeria (Labour Decree, 1974, section 38); Pakistan (Emigration Rules, 1979, section 20); Panama (Labour Code, section 98); Non-metropolitan territory: United Kingdom (Montserrat) (Emigrants' Protection Act, section 10).

<sup>207</sup> Pakistan (Emigration Rules, 1979, sections 18 and 19).

<sup>208</sup> For example Philippines (Labour Code, section 18); the same applies to countries which give an official body the monopoly of recruitment.

<sup>209</sup> For example Australia, Canada.

<sup>210</sup> For example Switzerland; Non-metropolitan territory: United Kingdom (Hong Kong).

<sup>211</sup> For example Belgium (Royal Order of 6 November 1967, section 7); France (Labour Code, section R341-4).

<sup>212</sup> Convention on Emigration between Belgium and Spain, procedural arrangement for the immigration of Spanish workers to Belgian coal fields dated 28 November 1956.

<sup>213</sup> Agreement between Switzerland and Italy on emigration of Italian workers to Switzerland, dated 10 August 1964; agreement between Switzerland and Spain on the engagement of Spanish workers for employment in Switzerland, dated 2 March 1961.

## **CHAPTER III**

### **PROTECTION AGAINST ABUSIVE CONDITIONS**

179. Illegal or clandestine migrations and the illegal employment of migrant workers are dealt with in the provisions of Part I of Convention No. 143, which requires ratifying States to take a series of measures to detect and suppress such practices, and to provide a minimum level of protection for irregular migrant workers.

180. In considering these provisions, it is important to bear in mind that they are complementary to those of Convention No. 97 which in Articles 2 to 5 makes provision for various protective measures, in particular as regards the information and assistance to be provided for migrant workers. In addition, Annexes I and II to the Convention make detailed provision for the recruitment, introduction and placing of migrant workers recruited under arrangements for group transfer.

181. Part I of the Convention was originally directed, until a late stage in its drafting, only against migrations in abusive conditions, i.e. those which involve the illegal recruitment, introduction and placement of workers or misleading propaganda contrary to the provisions of Convention No. 97, or illegal immigration with the help of manpower traffickers. Illegal employment was envisaged only when it was linked with such immigration.

182. It was only during the second discussion of the draft Convention by the Conference that the scope of Part I was extended to cover illegal employment generally and minimum standards of protection of migrant workers in an irregular situation.

183. This chapter will accordingly deal first with migrations in abusive conditions, and thereafter with illegal employment. A final section will examine the minimum standards of protection which have to be afforded to irregular migrant workers.

#### **1. Migrations in abusive conditions**

##### **(a) Definitions**

184. The Convention uses a variety of terms to describe the forms of migration against which Part I is directed. The title of Part I refers to "Migrations in abusive conditions" and Article 3 mentions



successively "clandestine movements of migrants for employment", "illicit or clandestine movements of migrants for employment" and "workers who have immigrated in illegal conditions".

185. It would seem that a distinction is made between clandestine migration, in which the controls on exit from the country of emigration and/or entry into the country of immigration are evaded, for example by crossing the frontier at an unauthorised point, and illegal or illicit migration in which the exit or entry may be open and apparently lawful but the purpose of the migrant is dissimulated. The most common cases are those of persons who travel as tourists and then take up unauthorised employment and those of persons admitted as seasonal workers or with a work permit for a limited duration who stay on to work after their authorisation has expired.<sup>1</sup>

186. More precise indications as to the types of migration aimed at by the Convention are provided by Article 2, paragraph 1, which refers to "any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations".

187. Although the legislative history of the Convention, as well as certain of the provisions of Part I<sup>2</sup> make it clear that it is aimed primarily against the organised movement of migrant workers by manpower traffickers, it seems from other provisions<sup>3</sup> that it also applies to illegal or clandestine migration by individuals acting spontaneously, whether on their own or in small groups. It would thus appear that the Convention is designed to prevent all forms of illegal migration for employment, although certain of its provisions are aimed more particularly at the suppression of organised movements of migrants which involve the abuses referred to in Article 2, as quoted in the preceding paragraph.

188. One government<sup>4</sup> has expressed the view in regard to the definition in Article 2, paragraph 1, that the general reference to "relevant international multilateral or bilateral instruments or agreements" means that this provision cannot be fully applied in so far as the provisions of unratified international instruments do not form part of a State's domestic law. Reference should be made in this regard to the indication given in the preparatory work that:<sup>5</sup>

From the discussions which took place in the Conference Committee in 1974, it seems that the 'international multilateral or bilateral instruments or agreements' were envisaged in general terms to cover the various legal arrangements applicable among member States. In the majority of cases, these will be duly ratified multilateral or bilateral Conventions, treaties or agreements.

It seems therefore that it was intended to refer primarily to ratified international instruments binding on the States concerned and applicable to the migratory movement in question. It would appear that it refers also to other instruments the terms of which, even in the absence of ratification or because they are not capable of ratification, the State concerned agrees to respect in practice. The provision does not however require a State to apply an international instrument which it has not freely accepted.

(b) Detection and suppression of  
migrations in abusive conditions

189. Article 2, paragraph 1, of the Convention requires each ratifying State to seek to determine systematically whether any movements of migrants for employment depart from, pass through or arrive in its territory in which the migrants are subjected to the conditions referred to in paragraph 186 above. Article 3 requires ratifying States to take measures, both within their jurisdiction and in collaboration with other States, to suppress clandestine movements of migrants for employment, and in particular to adopt measures against the organisers of illicit or clandestine migratory movements.

190. Certain of the measures to be taken are spelled out in the Convention. Article 4 provides for systematic contact and exchange of information between States; several provisions refer to consultation of employers' and workers' organisations; and under Article 6, paragraph 1, the measures taken must include "the definition and the application of administrative, civil and penal sanctions, which include imprisonment in their range, . . . ., in respect of the organisation of movements of migrants for employment defined as involving the abuses referred to in Article 2 of this Convention,\* and in respect of knowing assistance to such movements, whether for profit or otherwise". Article 5 provides that one of the purposes of the measures to be taken "shall be that the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities".

191. In the following paragraphs, general measures referred to by member States as designed to give effect to the purposes of the Convention will be considered first, following which measures of the kind specifically required by the Convention will be examined.

(i) General measures

192. In general it may be deduced that the reporting countries consider that the best way of preventing illegal or clandestine movements of migrant workers is by introducing and ensuring the observance of appropriate measures governing the recruitment of migrant workers, their departure from the home country and entry into and placement in employment in the country of immigration, i.e. measures of the kind envisaged by Convention No. 97 and described in Chapter II.

193. One important factor is the existence of adequate recruitment procedures, which may be organised under an agreement between the countries concerned<sup>7</sup> or set up by the country of emigration for the protection of its nationals.<sup>8</sup> The role played by such procedures in limiting recourse to illegal methods of migrating is illustrated by the fact that illicit crossing of the border between two countries increased substantially after the bilateral agreement for the introduction of seasonal workers from one country to the other came to an end in 1964.<sup>9</sup>

194. In some countries, it is compulsory for emigrants for employment to pass through the publicly organised system. In countries where this is not the case, additional safeguards may exist for those emigrating by other means, for example, the requirement that the worker should satisfy the competent national authority that he has a work permit or entry visa entitling him to work in the country of destination.<sup>10</sup> Another safeguard is provided by the prohibition on the recruitment of migrants for employment save by licensed recruiting

agents who are subject to government supervision,<sup>11</sup> and by the prohibition on the direct engagement of nationals for work abroad by foreign employers.<sup>12</sup>

195. In certain countries of immigration, migrant workers may, subject to exceptions as where there is a bilateral agreement with the country of emigration, or where nationals of specified countries are not subject to any restrictions, only be recruited or engaged through or with the express authorisation of the public employment service<sup>13</sup> or a special migrant workers' service.<sup>14</sup>

196. The measures just described are designed to regulate and control the departure, entry and placement of migrant workers, and their role in preventing and eliminating the abuses referred to in Article 2 of the Convention depends on the effectiveness with which they are enforced. What Part I of the Convention calls for in addition is that, where necessary, States should take measures specifically aimed at detecting and suppressing clandestine movements of migrants as well as the illegal employment of migrants. Information on measures of this kind is very limited.

197. Virtually no information has been provided on measures taken to detect illegal emigration movements. The only relevant measure provided for in the legislation communicated by governments is the power to search ships and other means of transport which are believed to be carrying an emigrant, with a view to determining whether an offence has been committed against the legislation governing emigration for employment.<sup>15</sup>

198. As to the detection of illegal or clandestine immigrants, a number of governments<sup>16</sup> have referred to the legal provisions governing the entry and residence of foreigners, which however are not primarily designed to detect unlawful immigrants for purposes of employment. To assess their relevance to the Convention, further information would be necessary on the manner in which these provisions are used to detect illegal or clandestine migrations for employment. Certain governments,<sup>17</sup> for example, have indicated that to control the number of illegal migrant workers entering the country frontier or other controls have been increased, and another<sup>18</sup> has stated that its employment and immigration commission is ever alert, through analysis of reports from immigration officers posted abroad or stationed in the country, to trends indicating development of organised illegal movements.

199. In two cases, the detection of increasing numbers of migrants from one country to another was followed by the introduction of a visa requirement by the country of destination for nationals of the country of origin concerned<sup>19</sup> or of more stringent conditions for the granting of a visa.<sup>20</sup>

200. One country<sup>21</sup> has provided information on systematic measures taken to detect and suppress illegal immigration and employment. It had found that the strengthening of frontier controls and of collaboration with countries of emigration was not sufficient to eliminate clandestine immigration, and that such measures had to be supplemented by constant action against employers using clandestine immigrant workers. Since effective action involves a number of different administrative services as well as the courts, it has created an interministerial liaison mission for action against manpower trafficking.<sup>22</sup> This mission's role is to co-ordinate and stimulate measures to combat the irregular introduction, employment and

harbouring of migrant workers. It centralises information and provides guidance to the services concerned, as well as proposing further measures, which have included increased penalties against traffickers and employers of illegal migrants, specialisation of labour inspectors in regions with a high proportion of foreign workers in migrant workers' questions and measures to draw the attention of the administrative and judicial authorities to the problems raised by clandestine immigration.

201. Another country's<sup>23</sup> immigration department has a special section responsible for investigating malpractices in relation to illegal entry and residence and the exploitation of migrants, and maintains a continuing programme of research into significant patterns of immigration malpractice and abuse. It also provides training on immigration problems both for its own officials and for law enforcement authorities.

202. On a more limited scale, another country<sup>24</sup> has referred to measures taken to check on persons granted temporary entry permits and ensure that they leave at the end of their authorised stay, including in particular the introduction of a computerised monitoring system.

203. One country<sup>25</sup> has reported that further efforts to detect clandestine immigration are unnecessary because vigorous measures were taken as soon as attempts began to introduce clandestine workers. Another country<sup>26</sup> has expressed the view that the best way of avoiding abuses in migration is to exercise strict control over the entry of migrants.

204. The practical problems of countries with long land frontiers are referred to by one country<sup>27</sup> which states that one difficulty preventing the ratification of the Convention is the problem of controlling migratory movements on its northern frontier by reason of its length and the heavy demands for migrant workers.

#### (ii) Collaboration between States

205. Very little information has been provided by governments in their reports on measures taken, in accordance with Articles 3 and 4, for collaboration with other States or for systematic contact and exchange of information between States.

206. One government, in commenting on the provisions of these Articles, has pointed out that migrant workers include persons who are regarded by their country of origin as illegal emigrants but are not regarded by the host country as illegal immigrants, and that in cases of this kind the country of immigration must be able to refuse to supply information, at all events in cases where it could be harmful to individuals.<sup>28</sup> However, the Convention is not directed against all forms of unlawful emigration, but only against those involving the abuses referred to in Article 2. Moreover, migrant workers in the situation referred to have not contravened the national laws and regulations of the country of immigration, and it is for this country to decide whether it will collaborate with the country of emigration which is seeking to enforce its legislation designed to limit the emigration of its nationals in conditions which are not abusive.

207. One immigration country<sup>29</sup> has referred to the importance of contacts with countries of emigration for the purpose of working out and introducing measures to prevent the departure of clandestine or

illegal migrants and to solve the problem of "fake tourists". One result of these contacts was the introduction, in agreement with the country<sup>30</sup> concerned, of a visa requirement following the detection of a growing number of irregular immigrants from that country. Another<sup>31</sup> has referred to regular exchanges of information and ideas for effective control with other immigration countries with similar problems, to close relations between its immigration officers posted abroad and local enforcement agencies in the countries of their posting, and to periodic discussions with the governments of countries from which there is substantial illicit traffic to it.

208. Some bilateral agreements provide that the parties will take all necessary measures to prevent clandestine migration between their countries,<sup>32</sup> or to identify and take action against illegal practices in their respective territories affecting the migration or employment of the nationals of the parties to the agreement, and to exchange information on such practices and measures to combat them.<sup>33</sup> However, another country<sup>34</sup> has reported that none of the emigration agreements entered into by it so far has touched on the problem of clandestine movements.

209. Such collaboration between States may take place on a regional basis. For example, in Latin America the countries of the Andean group (Bolivia, Colombia, Ecuador, Peru, Venezuela) have concluded the Andean Instrument respecting Migration for Employment with a view to regulating migratory movements between their countries and overcoming the problems of illegal migrations. The Instrument provides for co-ordination and co-operation between the labour migration offices of the countries concerned in organising and supervising migration for employment between the countries of the Andean group and for the introduction of sanctions against recruiters, intermediaries and the employers of irregular migrants after the entry into force of the Instrument. One of the governments party to the Instrument<sup>35</sup> has indicated that one of its objectives is to solve the problem presented by the presence of illegally employed migrant workers in the countries concerned. In another region, according to the report of one of the countries concerned,<sup>36</sup> the Organisation of African Unity has set up an ad hoc committee to study migrant workers' problems and to draw up a model agreement on migrant workers with a view to enabling States to limit clandestine migrations.<sup>37</sup>

210. One of the purposes of these contacts and exchanges of information is stated in Article 5 to be "that the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities". Some countries<sup>38</sup> have suggested that this provision involves an obligation to define extra-territorial offences and hence gives rise to problems of jurisdiction. However, it seems clear, both from the wording of the Convention and from the preparatory work<sup>39</sup> that this is not the case. The reference to Articles 3 and 4 shows that the question of prosecuting authors of manpower trafficking is one of those which must be settled by collaboration between States and by systematic contact and exchange of information. The purpose of the provision would seem to be to ensure that States provide one another with the necessary assistance, within the framework of their respective legal systems, to ensure that authors of manpower trafficking are prosecuted in an appropriate jurisdiction: it would not seem to require a State to change its rules as to criminal jurisdiction in order to enable it to prosecute in a case in which it would not otherwise have jurisdiction. One country,<sup>40</sup> for example, has stated that in the case of illegal migration movements through or from its country its participation in suppression (departure from the country

being unrestricted) would be limited to providing officials of the target country with any information which becomes available. This would seem to be the type of action envisaged by the Convention.

211. One country<sup>\*1</sup> has reported in this regard that Article 5 presents no problem for it because its penal code is applicable to persons committing an offence in its territory and an offence is deemed to be committed both where the offender acted and where the result was produced. Another country<sup>\*2</sup> where the legal situation is similar points out that prosecution and punishment are possible only if the offender enters the country.

212. The preceding paragraphs have referred essentially to co-operation between States of departure and States of arrival of migrant workers. The Convention also requires States to detect and suppress clandestine movements of migrants passing through their territory, and to collaborate with other States for this purpose.

213. The kind of measures which would seem to be necessary to this end are essentially twofold. In the first place, steps should be taken, in collaboration with the countries of departure and destination (whether or not under a formal agreement between the countries concerned), to detect unlawful migratory flows and to introduce measures to check them. Further measures may be necessary to prohibit or regulate recruiting or placing agencies which operate in a third country as intermediaries between migrant workers from one or more countries and prospective employers in yet another country, and to provide for sanctions in cases of abuse. However, governments' reports have not referred to measures of this kind nor more generally, save in the instance referred to in paragraph 210 above, to questions relating to the transit of migrant workers through their territory.

#### (iii) Sanctions

214. Article 6, paragraph 1, of the Convention spells out the types of sanctions for which provision must be made - administrative, civil and penal sanctions which include imprisonment in their range - in respect of the organisation of movements of migrants for employment involving the abuses referred to in Article 2, and knowing assistance to such movements, whether for profit or otherwise.

215. As regards the types of sanctions for which provision must be made, one country<sup>\*3</sup> has stated that it must be left to the national legal system to decide whether particular infringements should be penalised through criminal or administrative sanctions. The question was raised in the course of the preparatory work<sup>\*4</sup> as to whether the requirements of "civil, administrative and penal sanctions" meant that the three types of sanctions had to be applied simultaneously, and was answered in the negative, with the indication that this was not excluded in certain particularly grave instances. Since Article 6, paragraph 1, leaves it to national laws or regulations to define the sanctions, it would seem to follow that it is for each country to decide on the precise form of sanctions to be provided for particular infringements, subject to the express requirement that they shall include imprisonment in their range.

216. Another country<sup>\*5</sup> has commented that the requirement that the sanctions must include imprisonment within their range is very general in its terms, whereas under its legislation the penalty of imprisonment is limited to certain specific cases. Here again it may

be noted that it is for national law or regulations to define the precise nature of the offences for which imprisonment may be a possible penalty. The Convention provides certain indications as to the offences concerned, but leaves their detailed definition to each State.

217. The offences of organising movements of migrants for employment which involve the abuses referred to in Article 2 and knowing assistance to such movements will be considered together, since the distinction between organisation and assistance is not always clear and in most cases the varying degrees of involvement come within the scope of the same penal provisions.

218. In a number of countries of emigration, it is an offence to cause or assist or incite a person to emigrate for purposes of employment otherwise than in accordance with the law, which in such cases makes provision for a public system of emigration, or controls on the recruitment of emigrants, designed to ensure that the emigrants have the necessary documents for their lawful entry and employment in the country of destination. Offences against legislation of this kind are punishable in most countries<sup>46</sup> with a fine and/or imprisonment and in some<sup>47</sup> with a fine only.

219. Similarly, in countries of immigration where there is a publicly organised system for the recruitment and introduction of migrant workers, or where such operations require the authorisation of the competent authority, it is an offence punishable with a fine and/or imprisonment,<sup>48</sup> or with a fine only,<sup>49</sup> to introduce migrant workers into the country otherwise than in accordance with the procedures laid down by law. In another country it is an offence punishable with a fine and/or imprisonment to bring into the country, or promote the entry into the country, for purposes of employment of, foreign workers without work permits.<sup>50</sup>

220. Other countries<sup>51</sup> have referred to their legislation on employment services, which lays down penalties of imprisonment and/or a fine for unauthorised placing activities, to provide a legal basis for prosecuting the organisers of illegal immigration for purposes of employment and those who assist such immigration.

221. Several countries<sup>52</sup> have indicated that by virtue of their immigration legislation, under which it is an offence generally punishable with imprisonment and/or a fine, to assist persons to enter the country unlawfully, they are able to prosecute those who organise or assist illegal immigration for employment. This legislation is of course applicable to unlawful immigration generally and not directed specifically at migration for employment.

222. Other sanctions which may be imposed on the organisers of unlawful immigration when they are convicted include, in the case of repeated offences, the temporary or permanent closure of the offices or enterprises of the offenders,<sup>53</sup> prohibition of residence in the country, suspension of the offender's driving licence, temporary or permanent withdrawal of the authorisation to carry on international transport operations<sup>54</sup> and confiscation of any vehicle used in committing the offence,<sup>55</sup> or its sequestration until the unlawful immigrant is removed from the country.<sup>56</sup>

223. Administrative sanctions provided for in cases of organising or assisting illegal migrations include administrative fines<sup>57</sup> and withdrawal or suspension of the licence to act as an emigration agent.<sup>58</sup>

224. A number of countries have referred to offences additional to those dealt with above, which have been introduced to strengthen action against manpower traffickers. Thus in one country<sup>59</sup> it is an offence punishable with a fine and/or imprisonment to assist a foreigner to find employment for reward, or to act as an intermediary between a foreigner and an employer or the authorities in such a manner as to mislead one or other of these persons. In another<sup>60</sup> it is likewise punishable with a fine and/or imprisonment to induce a person to seek admission or procure his admission to the country by a false promise of employment or to publish or disseminate false or misleading information as to the opportunities for employment in the country, and in a third<sup>61</sup> similar penalties are imposed on persons who by fraud or false statements seek to obtain a work authorisation for a foreigner.

225. The importance attached by governments to sanctions as a means of fighting against the organisers of illegal migrations is illustrated by the cases in which measures have been taken, since the adoption of the Convention of 1975, to strengthen the penalties available<sup>62</sup> or to define further offences designed to discourage illegal movements of migrants.<sup>63</sup> Particulars of the measures in question are given in the footnotes to the preceding paragraphs. Specific mention may however be made here of the raising by one country<sup>64</sup> of the prescription period for offences connected with the unlawful introduction and employment of foreign workers from one to three years.

226. Certain countries have referred, as a means of combating unlawful migration and employment, to the penalties which may be imposed on the migrant worker who emigrates<sup>65</sup> or has immigrated<sup>66</sup> or taken employment illegally.<sup>67</sup> As well as imprisonment and a fine, these penalties may include deportation and a prohibition on re-entry.

(iv) Consultation of employers' and workers' organisations

227. The Convention requires that employers' and workers' organisations be consulted in connection with the elimination of migrations in abusive conditions in three respects: first, in seeking to determine whether such migrations take place and whether migrant workers are illegally employed in the national territory; secondly, in taking measures for systematic contact and exchange of information between member States; and, thirdly, in regard to the laws and regulations and other measures taken to prevent and eliminate the abuses against which the Convention is directed. It further provides that the representative organisations shall be enabled to furnish any information in their possession on these matters.

228. When governments have mentioned this aspect of the Convention, they have done so only in general terms, indicating for example that employers' and workers' organisations are consulted on matters relating to migrant workers,<sup>68</sup> or on the granting of work permits.<sup>69</sup> These consultations may take place through committees responsible for general manpower questions<sup>70</sup> or specifically for immigrant affairs.<sup>71</sup> One country<sup>72</sup> reports that its national immigration council includes representatives of immigrant workers among its members. One country,<sup>73</sup> in referring to the broad consultations which took place before new immigration legislation was adopted, mentions that several employers' and workers' organisations submitted their views, and in some cases touched on the question of illegal immigration.



## 2. Illegal employment

### (a) Definitions

229. Under Article 2, paragraph 1, of Convention No. 143, each ratifying State undertakes to seek to determine "whether there are illegally employed migrant workers on its territory and whether there ... arrive in its territory any movements of migrants for employment in which the migrants are subjected ... during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations". Article 3 requires ratifying States to adopt all necessary and appropriate measures to suppress illegal employment of migrants and against those who employ workers who have immigrated in illegal conditions. According to Article 6, paragraph 1, "Provision shall be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for the definition and application of administrative, civil and penal sanctions, which include imprisonment in their range, in respect of the illegal employment of migrant workers."

230. It may be noted from the wording of the above quoted provisions that Article 6 of the Convention applies to all forms of illegal employment and not just to those in which the migrant workers are subjected to abusive conditions as defined in Article 2. Although the term "illegal employment" is not defined, it would seem to refer to employment otherwise than in accordance with the national laws and regulations regulating the employment of foreigners. It is thus, as is indicated by the wording of Article 6, paragraph 1, for each State to define the precise scope of the term "illegal employment".

### (b) Detection and suppression of illegal employment

#### (i) General measures

231. Among the measures for the detection of illegally employed migrant workers, mention may first be made of provisions requiring the employer to provide the competent authority with particulars of all foreign workers employed by him. In one country,<sup>74</sup> the employer must provide particulars of the numbers and names of foreign workers employed by him when requested to do so by the employment office, labour inspector or other authority responsible for ensuring the protection of workers, and must inform the employment office of the termination of a migrant worker's employment. In another,<sup>75</sup> employers in respect of whom migrant workers have received permits may be required by an immigration officer to furnish particulars of all workers employed by them, and must inform the immigration officer when they cease to employ a migrant worker admitted to work for them. In others, an employer must keep a register of foreign workers employed by him and produce it for inspection on demand.<sup>76</sup> A further country<sup>77</sup> refers to the obligation of employers to provide information on foreign workers employed by them without indicating to whom the information has to be communicated. In some countries,<sup>78</sup> the labour authorities inform the authorities responsible for the control of foreign residents of the issue, modification and expiry of work permits or of the termination of employment of foreign residents.

232. In certain cases, the labour inspection service<sup>79</sup> or labour authorities<sup>80</sup> are responsible for ensuring that no migrant workers are employed illegally. One government<sup>81</sup> refers specifically to periodic inspections of establishments known to hire or harbour illegal workers, and in another<sup>82</sup> the labour inspectorate may be called on to assist the employment offices in their functions of ensuring that migrant workers are employed only in accordance with the law. A similar obligation is laid on this country's social insurance funds, and the government indicates that the checks periodically carried out by these funds would afford an additional opportunity for detecting illegal employment of migrant workers. Another government<sup>83</sup> has referred to the desirability of developing means by which social security institutions can contribute to the action taken by public authorities against the employment of clandestine immigrants. The role of the police in detecting unlawful immigrant workers or movements of workers has also been mentioned,<sup>84</sup> as has that of documentary control of temporarily admitted immigrants to ensure that they do not violate the conditions of their admission or stay beyond the authorised time.<sup>85</sup> One country<sup>86</sup> has referred in this regard to the introduction of a computerised monitoring system to follow up temporary permit holders.

233. The kind of problem facing some countries in seeking to detect cases of illegal employment is illustrated by the statement made by one government<sup>87</sup> that there is no system of documentation which would readily show that a person is not entitled to take employment.

234. Article 2 of the Convention deals not only with cases of illegal employment, but also with the detection and elimination of cases in which lawfully employed migrant workers' conditions do not correspond to the requirements of national legislation or of an international agreement, for example, the bilateral agreement under which they were recruited. While irregular migrant workers are particularly vulnerable to exploitation, the same is true to some extent of lawfully employed migrants, both because they are less well equipped than nationals to defend their own interests in a foreign country and, in many cases at least, because they are not free to change their job without authorisation and thus may hesitate to seek a remedy against abuse for fear of losing their job and being refused permission to take other employment. It is thus particularly important that States should be vigilant to ensure that the conditions of employment of migrant workers correspond in practice as well as in law to those laid down by legislation or bilateral or multilateral agreement. One country<sup>88</sup> has referred in this regard to a provision of a bilateral agreement under which it is empowered to appoint inspectors and supervisors in the country to which its nationals emigrate for seasonal employment, to ensure the protection of their interests.

235. The wording of this provision is not confined to employment conditions but is such as to cover other living conditions, such as standards of housing, which are governed by national laws or regulations or the relevant international agreement. This is an aspect of the Convention which has not been touched on in governments' reports, save in the case of one country,<sup>89</sup> which reports that a special service to supervise the housing of migrant workers has been established within the framework of the immigration service which is responsible for social measures in favour of migrant workers.

236. One safeguard against the employment of illegal immigrants referred to by a number of countries is the work permit system, under which either the worker must have a work permit,<sup>90</sup> which in some cases must be issued before his entry into the country,<sup>91</sup> or the employer

must obtain an authorisation to employ foreign workers.<sup>92</sup> Supplementary measures prescribed in this context to discourage illegal movements of migrants include the requirement, as a condition for the issue of a work permit, that the worker has entered the country legally,<sup>93</sup> or that the contact between the intended employer and worker has not been made through an illegal intermediary or method of recruitment,<sup>94</sup> or has been made in accordance with a recruitment agreement applicable to the recruitment of workers from the country of emigration.<sup>95</sup>

(ii) Sanctions

237. Article 6, paragraph 1, requires the definition and application of sanctions in respect of the illegal employment of migrant workers. Reference should be made to paragraphs 214-216 above in respect of certain general considerations relating to the sanctions required by the Convention which are equally applicable to sanctions for illegal employment.

238. A number of governments have referred to problems in connection with the requirement that sanctions should be imposed on employers in cases of illegal employment. One<sup>96</sup> has pointed out that it seems to contain no time limit, and that consequently an employer could be liable to prosecution for employing a worker who had immigrated illegally many years before. The provision that it is for each State to define the sanctions would however seem to leave national legislation free to introduce an appropriate prescription period.

239. The governments of certain countries, in which the illegal employment of migrant workers does not constitute an offence on the part of the employer although the worker is guilty of an offence, have explained that there is no system of documentation such as the compulsory carrying of identity cards, which would readily show that a person is or is not entitled to take employment,<sup>97</sup> or that it is not considered proper to impose on employers the burden of ascertaining the conditions under which migrants employed by them entered the country.<sup>98</sup>

240. Certain governments<sup>99</sup> have raised the question of the burden of proof in cases of prosecution for illegal employment, in the light of paragraph 2 of Article 6, which reads "Where an employer is prosecuted by virtue of the provision made in pursuance of this Article, he shall have the right to furnish proof of his good faith". These governments have indicated that under their legal system the burden of proof that an offence has been committed is on the prosecution, and one of them<sup>100</sup> has understood Article 6, paragraph 2, as reversing the burden of proof.

241. However, this would not seem to be the case. Under Article 6, paragraph 1, it is for national laws or regulations to define the offence of "illegal employment of migrant workers" in accordance with the national legal system. A number of the legal provisions referred to below expressly require that the employer acted "knowingly" or "negligently", and even where this is not the case it may be assumed that in many countries the general rules of criminal law will require the prosecution to prove a guilty intent without it being expressly spelled out. Provisions of this kind would clearly be in accordance with the Convention, and it would only be in cases where the offence was defined as an absolute one, in respect of which the prosecution did not have to prove that the employer had acted knowingly, that paragraph 2 of Article 6 would come into play.

242. Although the fact that Article 6, paragraph 1, leaves it to national laws or regulations to define the precise nature of the offence and thus leaves some scope for taking account of national particularities, it does seem that the very general provision requiring sanctions for "the illegal employment of migrant workers" without any qualification causes problems for some governments. It may indeed be noted that Article 6, paragraph 1, requires sanctions against the organisation of movements of migrants for employment only in so far as they are "defined as involving the abuses referred to in Article 2 of this Convention", but does not introduce a similar limitation to the offence of illegal employment. In fact this limitation did exist in the conclusions adopted by the competent committee of the Conference after the first discussion which referred to "any person employing workers who have immigrated in such conditions" (i.e. involving the abuses referred to in Article 2),<sup>101</sup> but it disappeared as a result of the adoption during the second discussion of an amendment whose aim was stated to be to introduce specific provisions for the detection of the illegal employment of migrant workers.<sup>102</sup> There was no indication that it was intended to change the nature of the offence of illegal employment.

243. The sanctions which may be imposed on employers in cases of illegal employment include imprisonment only in some of the countries which have provided particulars of the sanctions available.<sup>103</sup> In others<sup>104</sup> the legislation provides only for a fine, or limits the penalty of imprisonment to certain forms of illegal employment,<sup>105</sup> or to cases of employment of foreign workers on conditions noticeably less favourable than those of national workers engaged in comparable work.<sup>106</sup>

244. In one country,<sup>107</sup> while there is no direct penalty for illegal employment, it is an offence punishable with a fine and/or imprisonment not to notify the police of the intended employment of a foreign worker before he starts work. The Government explains that since the employer is unlikely to notify his intention to employ a worker illegally, he can be punished for failure to notify, and if he were to notify his intention the authorities would be able to intervene to prevent the illegal employment even though no sanctions could be imposed. In so far as these provisions ensure that illegal employment is either prevented or made the subject of the sanctions provided for in cases of failure to notify, it would seem that they meet the purpose of the Convention.

245. In another country,<sup>108</sup> as an additional penalty, the court may order the temporary or permanent, total or partial, closure of the enterprise.

246. Administrative sanctions against the illegal employer of foreign workers take two main forms. In the first place, employers who have infringed the provisions regulating the employment of foreign workers<sup>109</sup> or who have failed to comply with labour legislation generally<sup>110</sup> may be refused further authorisations to employ foreign workers. Secondly, financial penalties may be imposed administratively in the form of an obligation to pay the costs of repatriating the worker and his family as well as a fine<sup>111</sup> or of a compulsory contribution to the funds used for regulating the immigration of foreign workers.<sup>112</sup>

247. Civil sanctions against employers have not generally been referred to in governments' reports, but the legislation of some countries<sup>113</sup> enables the illegally employed worker to claim damages and the costs of repatriation from the employer.

248. The government of a country<sup>114</sup> in which it is not an offence to employ a migrant worker who does not have the necessary authorisation, states that in appropriate circumstances it may be possible to charge the employer with aiding and abetting an offence under the immigration legislation or with harbouring an illegal immigrant or a person who has committed an offence.

249. In their reports governments have in general limited themselves to indicating the legal provisions defining sanctions for the illegal employment of migrant workers. They have not given particulars of the way in which those sanctions are applied in practice or of the extent to which legal proceedings are brought against illegal employers, and in one instance a workers' organisation in communicating observations on the position of law and practice in relation to Convention No. 143 in its country has stated that no action has been taken against employers employing illegal migrant workers.<sup>115</sup>

(iii) Consultation of employers' and workers' organisations

250. Reference is made in this regard to paragraphs 227 and 228 above.

3. Minimum standards of protection

251. Convention No. 143 contains a number of provisions designed to ensure that migrant workers enjoy a basic level of protection even when they have immigrated or are employed illegally and their position cannot be regularised.

(a) Basic human rights

252. Article 1 of Convention No. 143 provides that "Each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers".

253. Some governments which have provided information on this matter in their reports have referred to national constitutional or legislative provisions guaranteeing respect for fundamental human rights and freedoms in general terms,<sup>116</sup> or for residents,<sup>117</sup> or providing specifically for the guarantee of certain rights to foreigners in their territory.<sup>118</sup>

254. Others have referred to their country's ratification of relevant international instruments, such as the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights,<sup>119</sup> or the European Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>120</sup> and one country<sup>121</sup> states that it respects the rights proclaimed in the Declaration of Philadelphia.

255. One government,<sup>122</sup> which considers that Article 1 must be interpreted in the light of the human rights instruments adopted by the United Nations and in particular the Universal Declaration of Human Rights and the International Covenants on Human Rights, states that it is unable to apply Article 1 in that it does not guarantee equal treatment of foreigners and nationals in particular as regards employment, social security and freedom of movement and choice of residence.

256. While it would appear appropriate to link the reference to basic human rights to the United Nations instruments, it does not seem that Article 1 of the Convention is as far-reaching in its scope as these objections suggest. In the first place, Article 1 refers to "basic" human rights, a qualification which can be considered as designed to limit the rights in question to the most fundamental. Secondly, it is placed in Part I of the Convention; even though it refers to all migrant workers and not just those who have migrated in abusive conditions, the rights thus covered have to be distinguished from those which are laid down in greater detail for regularly admitted migrant workers in Part II of the Convention, which can be accepted separately from Part I.

257. In these circumstances, it would seem that Article 1 is intended to refer to those basic human rights which are relevant to all migrant workers, irrespective of their legal status in the country of immigration, and which should accordingly be respected even in the case of an individual who is unlawfully in the country, such as, for example, the right to life, to protection against torture, cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person and protection against arbitrary arrest and detention, and - if criminal proceedings are brought prior to expulsion - the right to a fair trial (see Articles 6, 7, 9 and 14 of the International Covenant on Civil and Political Rights).

258. Article 1 would not however cover those rights whose exercise presupposes lawful residence as a member of a given society and which are spelled out in other Articles of the International Covenant on Civil and Political Rights and in the International Covenant on Economic, Social and Cultural Rights. As has already been indicated, a number of these rights are covered, in favour of regularly admitted migrant workers, in Part II of the Convention.

(b) Rights arising out of  
past employment

259. Article 9, paragraph 1, of Convention No. 143 provides that a migrant worker in whose case the laws and regulations relating to entry to the national territory or admission to employment have not been respected, and whose position cannot be regularised "shall ... enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits".

260. The question of the extent of the equality of treatment required by Article 9, paragraph 1, is raised by one government<sup>123</sup> which states that it cannot apply this provision because migrant workers generally, and not only those employed illegally, do not enjoy equality of treatment with nationals in the field of social security in certain limited respects. However, Article 9, paragraph 1, does not refer specifically to equality of treatment "with nationals". This is the subject of Part II of the Convention, which may be accepted separately. It would seem from the context that Article 9, paragraph 1, should be understood as requiring that the irregularly employed migrant worker enjoy equality of treatment with regularly admitted and lawfully employed migrants and not with nationals of the country of immigration. Any other interpretation would require States which are not in a position to accept Part II of the Convention but could otherwise accept Part I, to accord equality of treatment with nationals in respect of rights arising out of past employment, including rights

in the complex field of social security, to illegally employed migrant workers even when they do not grant such equal treatment to regularly employed migrant workers. In fact, it is only in the social security field that this question is likely to have any practical relevance, since the principle of equal treatment of regular migrant workers with nationals appears to be generally respected in the other areas covered by Article 9, paragraph 1.

261. This provision of the Convention does not appear to give rise to problems in so far as it refers to remuneration unless, as has been held to be the case in one country,<sup>124</sup> the failure to respect the legal provisions relating to the employment of foreigners results in the nullity of the contract of employment, so that the worker has no contractual basis on which to claim unpaid remuneration. Most countries which have provided information on this aspect of the Convention, however, have indicated that the worker is able to recover the remuneration arising out of past employment, either because a contract of employment without a work permit is a legally valid contract<sup>125</sup> or because the legislation expressly gives him the same claims against the employer as he would have had under a valid contract.<sup>126</sup> In this latter case, the worker has no claims going beyond the period of actual employment, and so is not entitled to a period of notice, although the government in question indicated that if the employment was unlawful because the employer had failed to apply for the renewal of the employment authorisation the worker would have a claim for damages. In any event, the Convention would not seem to require that the worker be given claims against the employer beyond the period of actual employment. The purpose of Article 9, paragraph 1, appears to be to ensure that illegally employed migrant workers are not deprived of their rights in respect of the work actually performed. It would not appear that it was intended to cover matters such as entitlement to a period of notice, which are often the subject of complex legal regulations or judicial decisions, not readily applicable to an irregular situation.

262. The reference in Article 9, paragraph 1, to "social security and other benefits" may be considered in connection with Paragraph 34 of Recommendation No. 151 according to which a migrant worker who leaves the country should be entitled, irrespective of the legality of his stay therein, *inter alia*, "to any outstanding remuneration for work performed, including severance payments normally due" and "in accordance with national practice, to compensation in lieu of any holiday entitlement acquired but not used". The extent to which an unlawful migrant worker may be entitled to benefits of this kind, which are not expressly mentioned in the Convention, must be determined by reference to national legislation and the principle of equality of treatment. For example, if, in spite of his irregular situation, he is entitled to a period of notice (even though the Convention, as indicated in the preceding paragraph, does not require this), he should be accorded the same rights as a regularly employed migrant who is dismissed with notice. If however his employment may be lawfully terminated without notice, he would only be entitled to such benefits as are accorded to a regularly employed migrant whose employment may be so terminated.

263. Reference may be made in this regard to Article 31 of the Andean Instrument respecting Migration for Employment, which provides that the fact that a migrant worker does not have the necessary documents shall not affect his rights against his employer, which shall be those laid down in the labour legislation of the country of immigration. The inclusion of provisions of this kind in an international instrument seems a useful way of ensuring that the principle is respected.

264. As regards social security benefits, Paragraph 34 of Recommendation No. 151 refers to benefits that may be due in respect of any employment injury suffered and to reimbursement of any social security contributions which have not given and will not give rise to rights. As far as social security rights arising out of past employment are concerned it seems legitimate - particularly in view of the fact that Part II of the Convention deals more generally with equality of opportunity and treatment in respect of social security rights for lawfully resident migrant workers - to seek guidance from these provisions of the Recommendation in examining the extent of the obligations imposed by Article 9, paragraph 1. The questions raised by certain governments will accordingly be considered in this context.

265. It must be noted in the first place that the Convention refers only to social security rights "arising out of past employment". It does not therefore extend to benefits the grant of which is not dependent on a period of employment. Secondly, it may be considered that the provision refers only to rights to which the worker has become entitled by virtue of his period of employment and of his fulfilling the other qualifying conditions required in the case of regularly admitted migrants.

266. Some governments<sup>127</sup> have indicated, for example, that certain benefits are conditional on lawful residence or a valid work permit. In so far as membership of the scheme under which the benefits are granted is only possible for lawful residents, it does not seem that an irregular migrant worker would be in a position to acquire rights under that scheme. So far as unemployment benefits are concerned, it may be assumed that a migrant worker in an irregular situation would not be available for employment in the country in which he had been working illegally, and hence would not qualify for unemployment benefit.

267. More generally, governments have indicated that the legal status of a migrant worker is irrelevant to his entitlement to social security benefits,<sup>128</sup> provided he is otherwise qualified through affiliation to the scheme and payment of the contributions.<sup>129</sup> In one country<sup>130</sup> certain benefits (supplementary pension and daily cash sickness benefit) are calculated on the basis of the worker's yearly earnings as declared to the income tax authorities, and in the absence of such a declaration, no entitlement to benefit can arise. In so far as a migrant worker regularly admitted to the country concerned who fails to pay social security contributions or to make an income tax declaration is in the same position as an illegally employed migrant worker guilty of the same omission, this kind of situation would not seem to involve unequal treatment in the meaning of Article 9, paragraph 1.

268. In so far, however, as, on detection of the irregular situation, a regularly admitted migrant worker who has not been affiliated to the social security scheme has the right, or his employer has the obligation, to regularise his situation by paying the contributions retroactively, similar provisions should apply in the case of irregular migrant workers. This may be particularly relevant in respect of employment injury benefits, which are specifically referred to in Paragraph 34 of Recommendation No. 151. It is common practice for national legislation to provide that a worker who has not been affiliated to the scheme shall be entitled to employment injury benefit, the employer being liable to pay the contributions in arrears. Provisions of this kind should apply to irregular migrants on the same basis as to regular migrants whose employers have failed to affiliate them to the scheme or to pay the contributions due.



269. The above considerations are relevant to social security rights arising out of a period of illegal employment. However, Article 9, paragraph 1, refers to "rights arising out of past employment" generally. In the context of social security, this must be understood, in particular for the purpose of acquiring rights to long-term benefits, as covering also any period of legal employment in the country concerned which may have preceded the illegal employment, as well as past employment in another country which would normally be taken into consideration, on the basis of bilateral or multilateral international agreements, when calculating entitlement to benefits.

270. The requirement of paragraph 2 of Article 9 that in cases of dispute the worker shall have the possibility of presenting his case to a competent body does not give rise to problems in any of the reporting countries which refer to this aspect of the Convention. The right to take legal proceedings or appeal to a competent body on the same basis as nationals exists in all of them.<sup>131</sup>

(c) Cost of expulsion

271. Article 9, paragraph 3, of Convention No. 143 provides that "In case of expulsion of the worker or his family, the cost shall not be borne by them".

272. Some governments seem to have taken this provision as covering the travel costs of the worker and his family to their country of origin. They have indicated, for example, that the cost of repatriating an illegal migrant and his family is borne by the Government,<sup>132</sup> or by the employer.<sup>133</sup>

273. One country,<sup>134</sup> however, points out that the provision is not clear, and states that if it does refer to costs of repatriation it is not in a position to apply the provision because its legislation requires the employer to pay the costs of repatriating only the worker but not the members of his family.

274. In fact, the Convention does not refer to the costs of repatriation but only to the cost of expulsion. It would seem that what is referred to is the costs incurred by a State in ensuring that the worker and his family leave the country, for example the costs of the administrative or judicial procedures leading to the expulsion order, or of implementing the order, for example by escorting the persons to be expelled to the frontier. Where these costs are recoverable from the migrant worker,<sup>135</sup> the Convention is not fully applied. However those countries which leave it to the expelled illegal migrant worker to pay his own travel costs<sup>136</sup> are not for that reason failing to apply this provision of the Convention. This approach is borne out by the consideration that, if "the cost of expulsion" included travel costs the illegal immigrant would find himself in a better position than the regularly admitted migrant worker who has to pay for his return journey. Indeed, if such an interpretation were accepted, migrant workers might even be encouraged to remain in the country after the expiration of their residence permit with a view to being expelled and hence repatriated free of charge.

(d) Regularisation of the situation

275. Article 9, paragraph 4, of Convention No. 143 provides that "Nothing in this Convention shall prevent Members from giving persons who are illegally residing in the country the right to stay and to take up legal employment".

276. Not many countries have referred to their practice in regard to regularising the situation of illegal migrant workers. In one country<sup>137</sup> this is done as far as possible and particularly if there is an economic interest in their employment, in another<sup>138</sup> they are encouraged to apply for identity cards which enable them to reside and work legally and thus protect them against exploitation. In a third,<sup>139</sup> the conditions and procedure for regularising the situation of unauthorised residents, including migrant workers, were laid down by decree.

277. In any event, this provision of the Convention is a declaratory one which does not require measures to be taken by ratifying States.

### Notes to Chapter III

<sup>1</sup> ILC, 59th (1974) Session, Report VII(1), p. 8.

<sup>2</sup> In particular Articles 3(b), 5 and the last part of Article 6, paragraph 1.

<sup>3</sup> Article 3, in particular 3(a); and the references to illegal employment of migrant workers or of workers who have migrated in illegal conditions in Articles 2, paragraph 1, 3(b) and 8, paragraph 1.

<sup>4</sup> Austria.

<sup>5</sup> ILC, 60th (1975) Session, Report V(2), p. 10.

<sup>6</sup> The relevant part of Article 2 is quoted in paragraph 186 above.

<sup>7</sup> Countries referring to such agreements include Argentina, Austria, Canada, Dominican Republic, Fiji, Haiti, Luxembourg, Mali, Morocco, Niger, Senegal, Switzerland, Trinidad and Tobago, Tunisia, Turkey, Venezuela. Non-metropolitan territories: United Kingdom (Antigua, Hong Kong).

<sup>8</sup> As in Egypt, India, Malta, Morocco, Pakistan, Philippines, Spain, Sudan, Tunisia.

<sup>9</sup> ILC, 59th (1974) Session, Report VII(1), p. 8, footnote 3 (emigration from Mexico to the United States).

<sup>10</sup> Pakistan (Emigration Ordinance, 1979, sections 8(2), 15).

<sup>11</sup> Finland, India, Kuwait, Pakistan, Philippines. Non-metropolitan territory: United Kingdom (Montserrat).

<sup>12</sup> Philippines (Labour Code, section 18).

<sup>13</sup> Federal Republic of Germany, Luxembourg, Niger, Tunisia.

<sup>14</sup> France.

<sup>15</sup> India (Emigration Act, 1922, section 29); Pakistan (Emigration Ordinance, 1979, section 11). Non-metropolitan territory: United Kingdom (Montserrat).

16 Argentina, Australia, Austria, Botswana, Bulgaria, Singapore, Switzerland. Non-metropolitan territories: United Kingdom (Gibraltar, Hong Kong).

17 France, Nigeria, Zambia.

18 Canada.

19 France in respect of nationals of Mauritius.

20 Switzerland in respect of nationals of Bangladesh and Pakistan.

21 France.

22 Inter-ministerial Order of 10 August 1976.

23 Australia.

24 New Zealand.

25 Austria.

26 Norway: ILC, 60th (1975) Session, Report V(2), p. 14.

27 Mexico.

28 ILC, 60th (1975) Session, Report V(2), p. 12: observation of the Government of Sweden.

29 France.

30 Mauritius.

31 Canada.

32 Convention of 14 February 1978 between Argentina and Bolivia on seasonal workers.

33 Protocol of agreement of 11 February 1977 between France and Mali on the employment and residence of workers.

34 Portugal.

35 Colombia.

36 Benin.

37 The Committee is composed of representatives of Algeria, Benin, Botswana, Tunisia, the Organisation of African Trade Union Unity, the Panafrican Employers' Organisation and the Secretary-General of the OAU.

38 United Kingdom. Non-metropolitan territory: United Kingdom (Hong Kong).

39 ILC, 60th (1975) Session, Report V(2), p. 13.

40 Canada.

41 Switzerland (Penal Code, sections 3(1) and 7(1)).

<sup>42</sup> Canada.

<sup>43</sup> Austria.

<sup>44</sup> ILC, 60th (1975) Session, RP, p. 652, para. 158.

<sup>45</sup> Switzerland.

<sup>46</sup> Finland (Placement Act, 1959, section 17); Morocco (Dahir of 8 November 1949, section 10); Norway (Employment Promotion Act, 1947, sections 28, 40); Pakistan (Emigration Ordinance, 1979, section 17); Philippines (Labour Code, sections 18, 25, 39(b)); Portugal (Legislative Decree 49,400 of 1969, sections 2 and 3); Singapore (Employment Agency Ordinance, 1958, section 18, imprisonment may not be imposed for the first offence); Spain (Emigration Act, No. 33/1971, section 53); Sri Lanka (Fee-Charging Employment Agencies Act, 1956, section 18).

<sup>47</sup> India (Emigration Act, 1922, section 25; however, a penalty of imprisonment may be imposed if fraud, coercion or intoxication were used). Non-metropolitan territory: United Kingdom (Montserrat) (Emigrants' Protection Act, 1929, section 12).

<sup>48</sup> France (Labour Code, section L364-3); Federal Republic of Germany (Employment Promotion Act, 1969 as amended by Act of 25 June 1975, section 227).

<sup>49</sup> Kuwait (Labour Law (Private Sector), 1964, section 97); Luxembourg (Employment Administration Act of 21 February 1976, section 41).

<sup>50</sup> Belgium (Act of 22 July 1976, sections 5 and 6).

<sup>51</sup> Austria (Employment Market Promotion Act, 1968, sections 9(5), 48); Norway (Employment Promotion Act, 1947, as amended by Act No. 70 of 1970 and Act No. 83 of 1971, sections 27, 28, 40).

<sup>52</sup> Australia (Migration Act, 1958, section 30); Canada (Immigration Act, 1976); Mexico (General Act on the population); Norway (Aliens Act, 1956); Sri Lanka (Immigrants' and Emigrants' Act, cap. 351); Switzerland (Federal Act on the residence and settlement of foreigners of 26 March 1931); Tanzania (Immigration Act, 1972); Trinidad and Tobago (Immigration Act, 1969); United Kingdom (Immigration Act, 1971). Non-metropolitan territory: United Kingdom (Montserrat) (Immigration Passport Act, cap. 25).

<sup>53</sup> France (Labour Code, section L364-3).

<sup>54</sup> France (Act 76-621 of 10 July 1976); Spain (Decree 1094/72 of 20 April 1972).

<sup>55</sup> France, *ibid.*; United Kingdom (Immigration Act, 1971, section 25(6)).

<sup>56</sup> Tanzania (Immigration Act, 1972, section 26(4)).

<sup>57</sup> Belgium (Act of 30 June 1971 on administrative fines in cases of breach of certain social laws, as amended by Act of 22 July 1976, section 11).

<sup>58</sup> Pakistan (Emigration Ordinance, 1979, section 12(3)).

- <sup>59</sup> Belgium (Act of 22 July 1976, section 5).
- <sup>60</sup> Canada (Immigration Act, 1976, section 95(i)(j)).
- <sup>61</sup> France (Labour Code, section L364-2).
- <sup>62</sup> Belgium (Act of 22 July 1976 amending the Royal Order No. 34 of 20 July 1967 relating to the employment of foreign workers); France (Act 76-621 of 10 July 1976 to strengthen the suppression of manpower trafficking and irregular employment of foreign workers); Federal Republic of Germany (Act of 25 June 1975 to amend the Employment Promotion Act, 1969); Luxembourg (Act of 21 February 1976 on the organisation and operation of the employment administration); Netherlands (Act No. 737 of 9 November 1978 on the employment of foreign workers).
- <sup>63</sup> Belgium and Federal Republic of Germany (legislation cited in the preceding footnote).
- <sup>64</sup> Belgium (ibid.).
- <sup>65</sup> India, Morocco, Pakistan, Portugal.
- <sup>66</sup> Canada, United Kingdom.
- <sup>67</sup> Canada, Federal Republic of Germany, United Kingdom.
- <sup>68</sup> Austria, Luxembourg, Switzerland.
- <sup>69</sup> Austria.
- <sup>70</sup> Luxembourg, Switzerland.
- <sup>71</sup> Austria, Federal Republic of Germany.
- <sup>72</sup> Luxembourg.
- <sup>73</sup> Canada.
- <sup>74</sup> Austria (Act on the Employment of Foreigners, 1975, section 26).
- <sup>75</sup> Tanzania (Immigration Act, 1972, sections 17, 18).
- <sup>76</sup> France (Labour Code, section R341-8); Tunisia (Labour Code, section 261).
- <sup>77</sup> Mexico.
- <sup>78</sup> Italy (Act No. 264 of 29 April 1949); Sudan (Manpower Act, 1974, section 22).
- <sup>79</sup> Botswana, Democratic Yemen, Italy, Luxembourg, Niger, Sudan. Non-metropolitan territory: United Kingdom (Gibraltar).
- <sup>80</sup> Kuwait, Luxembourg, Mali, Netherlands.
- <sup>81</sup> Canada.
- <sup>82</sup> Austria (Act on the Employment of Foreigners, 1975, section 27).

- 
- 83 France.
- 84 Canada, Italy, Luxembourg, Norway, Zambia.
- 85 Canada.
- 86 New Zealand.
- 87 United Kingdom.
- 88 Haiti.
- 89 Luxembourg.
- 90 Botswana, Ethiopia, Fiji, Gabon, Federal Republic of Germany, Italy, Jamaica, Kuwait, Lebanon, Luxembourg, Malaysia (Sabah), Mauritius, Rwanda, Sierra Leone, Singapore, Spain, Sudan, Tunisia, United Kingdom.
- 91 Belgium, Canada, Finland, Zambia. Non-metropolitan territory: United Kingdom (Guernsey).
- 92 Austria, Guatemala, Malaysia (Sarawak), Netherlands, Panama. Non-metropolitan territory: United Kingdom (Brunei).
- 93 Argentina, Fiji, Gabon, Kuwait, Lebanon.
- 94 Austria, Federal Republic of Germany.
- 95 Netherlands (Act of 9 November 1978 on the employment of foreign workers, section 8(b)).
- 96 Australia.
- 97 United Kingdom.
- 98 Australia.
- 99 Austria, Norway.
- 100 Austria.
- 101 ILC, 59th (1974) Session, RP, p. 581, Conclusions, Point 7.
- 102 ILC, 60th (1975) Session, RP, p. 642, para. 40.
- 103 Bahrain (Labour Law for the Private Sector (Legislative Decree No. 23 of 1976), sections 3, 158); Belgium (Royal Order No. 34 of 29 July 1967 on employment of foreign workers as amended by Act of 22 July 1976, section 27); Canada (Immigration Act, 1976, section 97); France (Labour Code, section R364-1); Gabon (Labour Code, section 252(c)); Luxembourg (Royal Ducal Regulations of 21 May 1972 on the employment of foreign workers, section 12); Mauritius (Employment (Non-Citizens) Restriction Act, 1970, section 3(3)); Netherlands (Act of 8 November 1978 on the employment of foreign workers, section 23, and Act of 26 June 1975 on economic offences, sections 1 and 6); Singapore (Regulation of Employment Act, 1965, section 14); Zambia (Immigration and Deportation Act, 1967, sections 29, 30).
- 104 Argentina (Act 17.294 of 23 May 1967 on clandestine immigration, section 5, as amended by Act 21.590 of 14 June 1977);

Austria (Employment of Foreigners Act, 1975, section 28); Benin (Labour Code, section 203); Chile (Legislative Decree No. 1094 of 1975, section 74); Haiti (Labour Code, section 369); Kuwait (Labour Code (Private Sector), 1964, sections 3, 97); Madagascar (Act No. 62-006 on the organisation and control of immigration, section 20); Mali (Labour Code, section 372); Panama (Labour Code, section 20); Rwanda (Labour Code, sections 27, 178); Singapore (Regulation of Employment Act, 1970, section 14); Tunisia (Labour Code, section 20).

<sup>105</sup> Switzerland: Federal Act of 26 March 1931 on the residence and settlement of foreigners, section 23; Ordinance of 23 October 1978 limiting the number of foreigners in gainful occupations, section 23.

<sup>106</sup> Federal Republic of Germany (Employment Promotion Act, 1969, as amended by Act of 25 June 1975, sections 227a, 229).

<sup>107</sup> Norway (Aliens Act, 1956, section 30).

<sup>108</sup> Belgium (Royal Order No. 34 of 20 July 1967 on employment of foreign workers as amended by Act of 22 July 1976, section 27).

<sup>109</sup> Argentina; Austria (Employment of Foreigners Act, 1975, section 30); Switzerland (Ordinance of 1 November 1978, section 23(2)).

<sup>110</sup> Belgium (Royal Order of 6 November 1967, section 8 2°); France (Labour Code, R341-4).

<sup>111</sup> Belgium (Act of 22 July 1976, section 9, Act of 30 June 1971 on administrative penalties in cases of breach of certain social laws, as amended by Act of 22 July 1976, section 11).

<sup>112</sup> France (Act of 76-621 of 10 July 1976, section 4, which inserts section L341-7 into the Labour Code).

<sup>113</sup> Benin (Labour Code, section 25); Congo (Labour Code, section 33); Gabon (Labour Code, section 25); Madagascar (Labour Code, section 25); Mali (Labour Code, section 38); Senegal (Labour Code, section 33).

<sup>114</sup> United Kingdom.

<sup>115</sup> Observations of the Christian Trade Union Movement of the Netherlands.

<sup>116</sup> Botswana (Constitution, article 3); Canada (Canadian Bill of Rights; Canadian Human Rights Act).

<sup>117</sup> Argentina (Constitution, articles 14, 16); El Salvador (Constitution, article 163). Sri Lanka (Constitution, article 14(2)).

<sup>118</sup> Argentina (Constitution, article 20); Colombia (Constitution, article 11); El Salvador (Constitution, articles 18, 163, 182 and 191); Mexico (Constitution, article 33 and Title I, Chapter 1). Portugal (Constitution, article 15).

<sup>119</sup> Canada.

<sup>120</sup> Austria, Luxembourg.

<sup>121</sup> Niger.

---

122 Switzerland.

123 France (non-contributory old-age benefit is payable only to nationals of countries with which there is a reciprocity agreement; previous employment abroad of foreigners is not taken into account unless there is a reciprocity agreement or they are EEC nationals: Social Security Code, section L 247).

124 Federal Republic of Germany (decision of 30 July 1975 of the Federal Labour Court). The Government indicates that a decision of 13 January 1977, in which the court left open the question of the effect on an unauthorised employment contract of the knowledge of both parties that authorisation was needed, seemed to indicate that the position taken in 1975 might be reversed. However, the latter decision related to a case in which an employment relationship authorised for one year was continued beyond that period without a request for a new authorisation.

125 Netherlands.

126 Austria (Act on the Employment of Foreigners, 1975, section 29).

127 France (family allowances), Netherlands (unemployment assistance financed from public funds under the Unemployment Assistance Act, for which nine weeks' legal residence is required), Switzerland (unemployment insurance in so far as a claim by an irregular migrant worker would lead to his detection, and certain other benefits which the Government does not identify).

128 Austria, Luxembourg, Netherlands, Norway.

129 France, Federal Republic of Germany.

130 Sweden: see Memorandum prepared by the International Labour Office in Official Bulletin, Volume LX (1977), Series A, No. 4, pp. 287-289.

131 Austria, Federal Republic of Germany, Luxembourg, Netherlands. Non-metropolitan territory: United Kingdom (Hong Kong).

132 Canada, United Kingdom. Non-metropolitan territory: United Kingdom (Hong Kong).

133 Belgium, Benin, Congo, Gabon, Madagascar, Mexico, Senegal.

134 Switzerland.

135 This seems to be the case in, for example, Austria, Luxembourg, Norway. However, the latter country has indicated that it is reviewing its legislation in this respect.

136 Sweden.

137 Austria.

138 Non-metropolitan territory: United Kingdom (Hong Kong).

139 Panama: Cabinet Decree No. 142 of 17 August 1972.



## CHAPTER IV

# EQUALITY OF OPPORTUNITY AND TREATMENT

### 1. Principles set forth in the instruments of 1949 and 1975

278. The elimination of discrimination in employment and living conditions to which migrant workers are exposed is one of the priority objectives of the four instruments which are the subject of the present survey. The approach adopted by the instruments is, however, different. Whereas the purpose of Convention No. 97 and Recommendation No. 86 is to proscribe inequality of treatment arising out of action by public authorities, Part II of Convention No. 143 and Recommendation No. 151 aim in addition at promoting equality of opportunity and eliminating discrimination in practice.

279. Before examining each of these two aspects of the question in turn, it should be recalled that the provisions of the four instruments as regards equality of treatment apply only to migrant workers and the members of their families who are lawfully within the territory of the country of immigration. The question raised by one government<sup>1</sup> of the definition of the family members to whom these provisions apply has been dealt with in paragraph 37 of the present survey.

#### (a) The 1949 instruments

280. Paragraph 1 of Article 6 of Convention No. 97 reads as follows:

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 the 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.

281. This provision prohibits inequalities of treatment, which may result from legislation or the practices of the administrative authorities in certain areas. It does not however oblige States to take legislative or other measures to redress inequalities in practice. Nevertheless, States are under the general obligation, when the matters covered by clause (a) in particular are regulated by national legislation, to ensure that the legislation is applied, particularly by means of labour inspection services or other supervisory authorities.

282. The wording according to which the State must apply "treatment no less favourable than that which it applies to its own nationals" authorises the application of treatment which, although not identical, would be equivalent in its effects to, or even more favourable than, that enjoyed by nationals.<sup>2</sup>

283. The principle of equality of treatment provided for by Convention No. 97 must be applied in various matters which will be examined in greater detail in section 2 of this chapter. It must, however, be made clear at this stage that Convention No. 97 does not deal with access to employment and to the different occupations. This question is covered by the provisions of Paragraph 16 of Recommendation No. 86.

284. The application of Article 6 of Convention No. 97 might raise certain constitutional problems in federal States. Paragraph 2 of Article 6 was thus adopted to enable these States to ratify the Convention, even though they may not be able to meet the obligations arising out of the principle of equality of treatment in full because of the way in which powers and responsibilities are shared between the federal authorities and those of the constituent units (States, provinces, cantons, etc.). Under paragraph 2 the provisions of

paragraph 1 of Article 6 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". In matters regulated by the legislation of the constituent units, or which are subject to the control of their administrative authorities, each State must determine the extent to which and the manner in which the provisions of paragraph 1 of Article 6 shall be applied; furthermore, in conformity with the provisions of paragraph 7(b)(ii) of article 19 of the Constitution of the International Labour Organisation, States must arrange for consultations between the federal authorities and those of the constituent units with a view to promoting co-ordinated action to give effect to the principle of equality set forth in paragraph 1 of Article 6.

(b) The 1975 instruments

285. To ensure equality of opportunity and treatment in practice, it is essential that legislation and administrative practice should not permit any differences in treatment. Nevertheless, as many governments stress,<sup>3</sup> this is not enough. In the field of work and conditions of life migrants, more than any other groups, are the victims of prejudice and other unfavourable attitudes. Moreover, owing to their lack of information and knowledge, often compounded by linguistic difficulties, they do not always insist on their recognised rights. Part II of Convention No. 143 and Recommendation No. 151 therefore contain provisions requiring not only the repeal of statutory provisions and the modification of administrative practices which are discriminatory, but also action by the public authorities to promote equality of opportunity in practice. While taking account of the special needs of migration for employment, the 1975 instruments draw their general inspiration from the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958. These instruments were the subject of two general surveys by the Committee of Experts in 1963 and 1971,<sup>4</sup> the findings of which should be borne in mind when reading the present survey.

286. Under Article 10 of Convention No. 143 each State undertakes to "declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms ...".

287. Although the Convention clearly states the scope and content of the policy to be followed - ensuring equality of opportunity and treatment in law and in practice in each of the fields listed in Article 10 - it leaves each State the choice of methods to be followed in declaring and pursuing this policy. These methods must merely be "appropriate to national conditions and practice". Depending on circumstances, the policy of equality of opportunity and treatment may be established by constitutional or legal provisions, by a general policy statement by the government or parliament, by a series of administrative or legislative measures, or by a combination of these various means. The fact that there is no general text expressly setting forth a policy of equality of treatment is thus not an obstacle to acceptance of the obligations arising out of Part II of Convention No. 143, as one government appears to believe.<sup>5</sup>

288. It is not necessary to achieve equality of opportunity and treatment immediately the Convention has been ratified. It is the objective of a national policy which may be implemented progressively

under a co-ordinated programme of positive measures. These are described in detail in Article 12 of the Convention and in certain provisions of the Recommendation No. 151 which will be examined in sections 4 and 6 of this chapter and in Chapter V.

289. A number of governments have referred to the formulation of a national policy of equality of opportunity and treatment. Many years ago the parliament of one country<sup>6</sup> adopted a resolution setting forth the principle that immigrants must have the same rights and obligations as the rest of the population. In another country<sup>7</sup> this policy has been expressed in a government statement containing a series of nine fundamental principles applicable to immigrants. In a number of countries<sup>8</sup> the general principle of equality between foreigners and nationals, subject to certain reservations, is laid down in constitutional provisions. Since these provisions regulate only relations between the State and private individuals, however, and not relations between private persons (particularly between employers and workers), further measures to supplement them would appear necessary.

290. Certain governments<sup>9</sup> have stated in their report that a policy of promoting equality cannot be fully applied to migrant workers, during the period in which their access to employment is subject to restrictions. One government<sup>10</sup> has also pointed out that equality of treatment could not be achieved in all its aspects for seasonal workers. This question, which was discussed on several occasions during the preparatory work, called forth the following commentary from the International Labour Office: "Under the text in its present form, seasonal migrant workers are obviously not excluded (as they are likewise not excluded under Convention No. 97) and they should therefore benefit from equality of opportunity and treatment. It seems likely, however, that the extent to which they will really be able to benefit from the 'national policy' enjoined by the Convention will depend on the time they stay in the country of employment."<sup>11</sup> It would seem obvious that, although seasonal workers, like other migrant workers, must enjoy equality of treatment in matters having an immediate impact such as remuneration, hours of work, etc., the possibility of enabling them to benefit from measures which demand a certain time, such as vocational training, is in practice much more limited when account is taken of the temporary exceptions in respect of free choice of employment authorised by Article 14(a) of Convention No. 143.

291. The report of one government<sup>12</sup> indicates that under the Basic Law it is not possible to impose an obligation on the State to intervene in matters which are left to negotiation between management and labour.

292. In this connection, it should be noted that Article 10 of Convention No. 143 calls upon States to pursue a national policy of equality by "methods appropriate to national conditions and practice". As the Committee remarked in its general survey of 1971<sup>13</sup> on Convention No. 111, which imposes an obligation stated in similar terms, this provision does not oblige States "to intervene in certain areas in any manner not appropriate to such conditions and practice. In matters which by law and by tradition are left to be negotiated between the parties, the State may endeavour to obtain the desired results, where necessary, by exhortation, by attempts at persuasion or by negotiation, rather than by having recourse to executive measures or legislation." Article 10 of Convention No. 143 admittedly stipulates that the national policy must be designed "to promote" and "to guarantee" equality of opportunity and treatment, whereas Article 2 of Convention

No. 111 mentions only the promotion of equality; it nevertheless remains true that, while States are required to use the means available to them in order to guarantee equality, this obligation may be imposed on them only to the extent that it is compatible with national conditions and practice. The requirement that the methods be "appropriate to national conditions and practice" is also expressly stated in Article 12 of Convention No. 143, which specifies the measures to be taken within the framework of the national policy. Accordingly, clause (b) of Article 12, which refers specifically to the enactment of "such legislation ... as may be calculated to secure the acceptance and observance of the policy", cannot be interpreted as imposing the general obligation to enact legislation in all the fields covered by Part II of the Convention. In principle the State must resort to the adoption of legislative measures only in cases where such action constitutes a method "appropriate to national conditions and practice". This conclusion is not invalidated by clause (g) of Article 12, according to which States must guarantee equality of treatment, with regard to working conditions, for all migrant workers who perform the same activity. On the one hand, since this provision is part of the general framework of Article 12, the measures it prescribes must be taken in a manner consistent with "national conditions and practice". On the other, a study of the preparatory work<sup>14</sup> reveals that this provision was adopted "to avoid discrimination between migrant workers according to their nationality and their particular form of employment".

293. Unlike Article 6 of Convention No. 97, Part II of Convention No. 143 contains no special provisions governing federal States. Given the very flexible wording of Articles 10 and 12, however, it should be possible for these States to accept the obligations of the Convention without prejudice to the division of powers and responsibilities between the authorities of the federal State and those of its constituent units. In this respect one government<sup>15</sup> has indicated that, since the field of education lies largely within the competence of the cantons, the Confederation can only issue recommendations to persuade them to take, or dissuade them from taking, certain measures; in the cases in which the federal government has intervened the reactions have been positive.

## 2. Subjects covered by the instruments

### (a) Employment and occupation

294. Paragraph 1(a) of Article 6 of Convention No. 97 refers to basic working conditions, including remuneration, and to certain other matters, including vocational training. It does not refer to access to employment.

295. The policy of equality provided for by Article 10 of Part II of Convention No. 143 must relate, among other things, to employment and occupation. These terms are similar to those used in Convention No. 111, according to Article 1, paragraph 3, of which "the terms 'employment' and 'occupation' include access to vocational training, access to employment and to particular occupations and terms and conditions of employment". It would seem logical to attribute the same meaning to these terms in the context of Convention No. 143, the more so as the provisions of Recommendation No. 111, which clarify the content of these various items (Paragraph 2(b), (i) to (ii)) are repeated in similar terms in Paragraph 2(a) to (f) of Recommendation No. 151.

296. As regards access to vocational training, employment and the different occupations, Paragraph 2 of Recommendation No. 151 states that migrant workers and members of their families should enjoy effective equality of opportunity and treatment in respect of access to vocational guidance and placement services (clause (a)), access to vocational training and employment of their own choice (clause (b)), advancement in accordance with their individual character, experience, ability and diligence (clause (c)), security of employment, the provision of alternative employment, relief work and retraining (clause (d)).

297. Equality of treatment in respect of security of employment, the provision of alternative employment, relief work and retraining is also provided for under Article 8, paragraph 2, of Part I of Convention No. 143. The difficulties arising out of the inclusion of provisions concerning equality of treatment in Part I, which was originally intended to cover only migrations in abusive conditions, will be examined in Chapter VI of the present survey.

298. "Conditions of employment" are listed in the remaining clauses of Paragraph 2 of Recommendation No. 151, which mentions remuneration for work of equal value (clause (e)), conditions of work, including hours of work, rest periods, annual holidays with pay, occupational safety and health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment (clause (f)).

(b) Social security

299. Both Convention No. 97 (in Article 6, paragraph 1(b)) and Convention No. 143 (in Article 10) provide that equality of treatment must cover social security.

300. Under Article 6, paragraph 1(b), of Convention No. 97 social security comprises "légal 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". This clause also provides for certain arrangements as regards on the one hand "the maintenance of acquired rights and rights in course of acquisition" (Article 6, paragraph 1(b)(i)), and on the other "benefits or portions of benefits which are payable wholly out of public funds, and ... allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension" (Article 6, paragraph 1(b)(ii)).

301. It should be pointed out that, unlike the English version, the French and Spanish text of Article 6, paragraph 1(b), of Convention No. 97 does not mention "invalidity" among the contingencies covered. This omission is, however, of no consequence in view of the general terminology used in this clause, which also includes "any other contingency which ... is covered by a social security scheme".

302. In connection with Part II of Convention No. 143, it should be recalled that the proposed Convention prepared by the International Labour Office did not mention social security in Article 10 for the following reasons. Firstly, this provision was "intended to supplement the provisions already to be found in Convention No. 97, of which Article 6 is intended, in particular, to establish equality of treatment in social security measures relating to employment, and which

does not prescribe reciprocity in this field".<sup>16</sup> Furthermore, the question of equality of treatment in respect of social security was already the subject of an ILO instrument specifically designed to deal with the technical problems which arose in this field, namely the Equality of Treatment (Social Security) Convention, 1962 (No. 118).<sup>17</sup> The reference to social security was not added until the second discussion in the competent Conference committee, on the understanding, however, that "the inclusion of social security in the proposed instrument would result in the restatement of a fundamental, necessary principle, but would not contradict other Conventions concerning the regulation of technical questions arising in this area".<sup>18</sup>

303. As the preparatory work clearly shows, the inclusion of social security among the fields to be covered by the policy of equality of opportunity and treatment provided for under Article 10 of Convention No. 143 merely restates a general principle already formulated by other instruments. The intention of the Conference was thus not to go into the technical aspects of the question, still less to challenge the principles already laid down by other instruments. Equality of treatment as regards social security, as provided for by Article 10 of the above-mentioned Convention, must therefore be considered in the light of the provisions of Article 6, paragraph 1(b), of Convention No. 97, which Convention No. 143 is designed to supplement. Account should also be taken of the provisions of Convention No. 118, although there is one major difference between this instrument and Conventions Nos. 97 and 143. Based as it is on the principle of reciprocity, Convention No. 118 prescribes equality of treatment only for nationals of countries which have ratified the Convention, whereas the provisions of Article 6 of Convention No. 97 and Part II of Convention No. 143 apply to migrant workers and members of their families whether or not they are nationals of a country which has ratified the Convention in question.

304. The application of the principle of equality of treatment in respect of social security raises complex technical problems which have already been discussed in a general survey made by the Committee of Experts in 1977.<sup>19</sup> The conclusions of this survey remain generally valid.

305. The fact that Article 10 of Convention No. 143 is worded in very general terms as regards social security has nevertheless given rise to a number of comments by governments.

306. One government<sup>20</sup> questions whether equality of treatment relates only to benefits based on contributions or whether it applies to other benefits as well. In this connection it should be noted that Article 10 of Convention No. 143 lays down the principle of equality of treatment in respect of social security in a general way and does not therefore exclude non-contributory benefits. Nevertheless, in the light of the intention expressed by the Conference, namely that the inclusion of social security in Article 10 of Convention No. 143 should not conflict with the provisions of the other Conventions dealing with this subject, it would be possible in the case of non-contributory benefits to allow special arrangements similar to those authorised under Article 6, paragraph 1(b) (ii), of Convention No. 97, and Article 4, paragraph 2, of Convention No. 118.<sup>21</sup>

307. A closely related problem was raised by the government of a country<sup>22</sup> whose legislation makes the grant of unemployment benefit to foreigners under a non-contributory scheme conditional upon a period of residence less than that authorised by Article 4, paragraph 2(a), of

Convention No. 118. Legislation of this kind would not appear to conflict with Article 10 of the Convention for the reasons set forth in the foregoing paragraph. Another government<sup>23</sup> has remarked that, following the recent amendment of the national insurance legislation, the basic old-age, invalidity and survivors' pensions (all non-contributory benefits), hitherto reserved for nationals, would now be paid to foreigners who could produce evidence that they had resided in the country for a certain number of years. In so far as the conditions of residence fixed by this new legislation are in conformity with those laid down by Convention No. 118 (Article 2, paragraph 6(a), and Article 4, paragraph 2) or are authorised under the provisions of Article 6, paragraph 1(b)(ii), of Convention No. 97, they should also be considered as compatible with Article 10 of Convention No. 143.

308. One government<sup>24</sup> has raised the question of whether the provisions of Article 10 of Convention No. 143 respecting social security also cover the payment of benefits abroad. Part II of Convention No. 143 and Article 6 of Convention No. 97 apply only to migrant workers and members of their families lawfully within the territory of the country of employment. These provisions are not therefore designed to deal with the payment of benefits to beneficiaries residing abroad. This question is, however, dealt with in Paragraph 34 of Recommendation No. 151, at least as far as concerns employment injury benefits.

309. The same government also states that for old-age insurance purposes the totalisation of periods of insurance arising out of earlier periods of employment abroad is in principle recognised only for certain privileged categories of foreigners and for nationals of countries with which a reciprocity agreement has been concluded. This is part of the more general question of maintenance of rights in course of acquisition, which is based on complex technical criteria and can therefore not be regulated by Part II of Convention No. 143, Article 10 which merely restates a general principle as far as social security is concerned.<sup>25</sup>

310. Finally, two governments<sup>26</sup> mention certain differences in treatment between foreigners and nationals as regards the benefits granted under transitional schemes. In the light of the considerations set forth above, it is permissible for benefits of this type to be governed by special arrangements, as expressly provided for by Article 4, paragraph 3, of Convention No. 118.

#### (c) Trade union rights

311. Article 6, paragraph 1(a)(ii), of Convention No. 97 stipulates that equality of treatment must be applied in respect of membership of trade unions and enjoyment of the benefits of collective bargaining.

312. Article 10 of Convention No. 143 provides that the policy of equality of opportunity and treatment must cover "trade union rights". The content of these rights is described in greater detail in Paragraph 2(g) of Recommendation No. 151, which covers membership of trade unions, exercise of trade union rights and eligibility for office in trade unions. This Paragraph also mentions eligibility for office in labour-management relations bodies, including bodies representing workers in undertakings.



(d) Cultural rights

313. The inclusion of cultural rights in Article 10 of Convention No. 143 was decided during the second discussion of the draft instrument by the competent Conference committee. This reference would appear to have been introduced in order to give express recognition to the right of migrant workers to participate in the cultural life of the country and to maintain and develop their own cultural heritage in the same conditions as nationals.

314. One government<sup>27</sup> has queried whether cultural rights also cover the right to education in general, and whether the conditions of residence to which the award of education grants is subject would in consequence be contrary to the principle of equality as provided for by Article 10.

315. Such an interpretation might be supported by the fact that, following the adoption of the amendment to include "cultural rights" in Article 10 of the Convention, another amendment, referring among other things to equality of opportunity as regards general education, was withdrawn by its author as pursuing similar objectives.<sup>28</sup> Moreover, Paragraph 2(i) of Recommendation No. 151 refers to the benefit of educational facilities. It should, however, be borne in mind that the question of education does not in principle lie within the ILO's field of competence. Account is taken of educational matters only in so far as the completion of certain studies constitutes a condition for access to certain occupations or professions, or to a given course of vocational training. Be that as it may, the inclusion of cultural rights in Article 10 of Convention No. 143 cannot be considered as anything more than the statement of a general principle whose purpose cannot be to regulate all questions resulting from its application, particularly those relating to the granting of scholarships and various other forms of educational assistance. In this respect it will be noted that, although the Convention against Discrimination in Education, adopted by the UNESCO General Conference on 14 December 1960, provides that foreigners residing on the national territory must enjoy access to education (Article 3(e)), it only expressly prohibits different treatment as regards scholarships and other forms of assistance as between nationals (Article 3(f)).

(e) Individual and collective freedoms

316. The inclusion of individual and collective freedoms in Article 10 of the Convention was the subject of lengthy discussions in the Conference committee, since certain reservations had been made as regards political rights. These reservations were summarised as follows in the report prepared by the International Labour Office for the second Conference discussion:

The addition of the words "and of individual and collective freedoms", which was decided on during the first discussion, continues to provoke objections and requests for explanation. It is clear from the discussions that the Workers' members who sponsored this addition had chiefly in mind such forms of freedom as "freedom of information, expression and assembly" and not "political rights". After the rejection of a subamendment intended to stipulate the exclusion of rights of a political nature, two Government members considered that political rights were included in "individual and collective freedoms". This interpretation was not accepted by the Employers' and Workers'

members. It is thus clear that, although the majority of the Committee wished to avoid the negative effect that would have resulted from express exclusion, the proposed text is not intended to cover "political rights" but rather the exercise of various "freedoms" on the ground that they are linked to the exercise of labour and trade union rights.<sup>29</sup>

317. These explanations show that the term "individual and collective freedoms" is to be interpreted as meaning freedoms such as freedom of information, expression and assembly, on which the full exercise of trade union rights depends, as stressed by the Conference in its 1970 resolution concerning trade union rights and their relation to civil liberties. This expression does not cover political rights, even if such rights are to some extent recognised for migrant workers in certain countries.<sup>30</sup>

(f) General conditions of life

(i) Housing

318. Both Article 6, paragraph 1(a)(iii), of Convention No. 97 and Paragraph 2(i) of Recommendation No. 151 provide that equality of treatment should cover accommodation or housing.

319. Equality of treatment in respect of accommodation, as provided for by Convention No. 97, covers the occupation of a dwelling, to which migrant workers must have access in the same conditions as nationals. When the Conference adopted Article 6, paragraph 1(a)(iii), of Convention No. 97, it was equally concerned with conditions of hygienic accommodation.<sup>31</sup> A special clause to this effect was not, however, included in this provision, since it might have been interpreted as granting more favourable treatment to foreigners than to nationals. On the other hand, Article 6, paragraph 1(a)(iii), cannot be taken to refer to access to home ownership or consequently to the various forms of public assistance which may be granted with a view to facilitating property ownership. This conclusion, moreover, would appear to be confirmed by the provisions of the Model Agreement annexed to Recommendation No. 86. Firstly, housing conditions are the subject of a separate provision of the Agreement (Article 20)<sup>32</sup> and are no longer included in the matters in respect of which equality of treatment is to be applied, which are dealt with in Article 17. Secondly, Article 18(b) of the Agreement, which applies essentially to permanent emigration, contains an express provision relating to equality of treatment in respect of the acquisition, possession and transmission of immovable property, which is not included in Article 6 of Convention No. 97.

320. In these circumstances, the provisions of national legislation reserving for nationals the benefit of various subsidies and other forms of public assistance for the purpose of acquiring the ownership of their own homes, mentioned by certain governments,<sup>33</sup> do not come within the scope of Article 6, paragraph 1(a)(iii), of Convention No. 97; the same is true of national regulations limiting or restricting the right of foreigners to acquire immovable property. This consideration would also appear to apply to Paragraph 2(i) of Recommendation No. 151, the provisions of which supplement the 1949 instruments.

(ii) Legal proceedings

321. Under Article 6, paragraph 1(d), of Convention No. 97 equality of treatment must apply in respect of "legal proceedings" relating to the matters referred to in the Convention. This clause is worded in sufficiently general terms to cover not only proceedings before the ordinary courts, but also proceedings before a specialised instance competent in labour matters, such as a conciliation board.<sup>34</sup> It also covers general procedural rules, such as legal aid and the deposit of a security to guarantee the payment of costs, in so far as the dispute relates to matters covered by the Convention.

322. Article 10 of Convention No. 143 contains no provisions on this subject. It is nevertheless important for migrant workers to have access to the courts in the same conditions as nationals to enable them to exercise their right to equality of treatment effectively.

(iii) Other fields

323. Equality of treatment in respect of remuneration may be threatened if the employment of a migrant worker is subject to a special tax. For this reason Article 6, paragraph 1(c), of Convention No. 97 also refers to "employment taxes, dues or contributions payable in respect of the person employed".

324. Paragraph 2 of Recommendation No. 151 provides in more general terms that migrant workers and their families should enjoy effective equality, opportunity and treatment in respect of "conditions of life" including housing and the benefit of social service and educational and health facilities (clause (i)) and also covers "rights of full membership in any form of co-operative" (clause (h)).

3. Repeal or abolition of discriminatory legislative or administrative measures

(a) General

325. Article 6 of Convention No. 97 implies the repeal or abolition of discriminatory legislative measures and practices in the fields covered by the instrument. A similar obligation is expressly stipulated by Article 12(d) of Convention No. 143, under which States must "repeal any statutory provisions and modify any administrative instructions and practices which are inconsistent with the policy" of non-discrimination.

326. On the basis of the information available it would appear that, as far as the field of labour is concerned, formal discriminatory provisions are to be found only as regards a limited number of matters mainly concerned with trade union rights, social security and access to employment.

327. The problems posed by the implementation of the principle of equality of opportunity and treatment in social security will not be discussed here, since they were already the subject of a general survey by the Committee of Experts in 1977 (see above, paragraphs 299 to 310). The difficulties raised by the application of the principle of equality of opportunity and treatment as regards access to employment will be dealt with in section 3(b) of this chapter.

328. As regards trade union rights, national law and practice generally recognise the right of foreign workers to join trade union organisations in the same conditions as national workers. In some countries,<sup>35</sup> however, the condition of nationality or citizenship is required for trade union membership, while in others<sup>36</sup> foreigners may become members of trade unions only subject to certain residence qualifications and/or to conditions of reciprocity. Finally, the law may also make it compulsory for there to be a certain percentage of national workers in trade union organisations.<sup>37</sup>

329. Eligibility for trade union office is more frequently subject to a nationality condition,<sup>38</sup> which in certain countries may be waived after a prescribed period of residence or employment<sup>39</sup> or when there is a reciprocity agreement between the countries concerned.<sup>40</sup> The law<sup>41</sup> also sometimes fixes the proportion of trade union officers who must be nationals.

330. The question of the exercise of trade union rights is more difficult to judge. An examination of the information supplied by governments has not revealed the existence of legal restrictions based on nationality as regards the exercise of trade union rights - including the right to take part in disputes - by foreign workers, either as officers or as members of an organisation. This question should nevertheless be examined in the light of the often widespread discretionary powers enjoyed by administrative authorities to order the expulsion of foreigners. Depending on the manner in which these powers are exercised, they may constitute a genuine impediment to the exercise of trade union rights by foreign workers.

331. As regards eligibility for office in labour-management relations bodies, which is specified in Paragraph 2(g) of Recommendation No. 151, certain governments<sup>42</sup> have mentioned the existence of legal provisions limiting the rights of foreign workers to be members of such bodies. The legislation of a number of countries<sup>43</sup> has, however, been amended to ensure equality of treatment between foreigners and nationals in this field.

332. In other fields there are few legislative or administrative provisions making distinctions on the basis of nationality.

333. No government has reported the existence of discriminatory provisions as regards conditions of work. In most cases the labour legislation applies equally to foreign workers under the general provisions relating to its scope.

334. As regards security of employment, it is important that the guarantees stipulated by law, for instance in the event of unjustified dismissal or staff reductions, apply to foreign workers as well as to nationals. Where the legislation makes this protection subject to a certain type of contract, such as contracts of indeterminate duration, it should be extended to foreign workers on the same terms as to nationals, subject to the temporary exception provided for by Article 14(a) of Convention No. 143. According to the available information, laws which make express distinctions in this field are rare. In some countries,<sup>44</sup> however, the legislation provides that foreigners, or at least those who are subject to work permit restrictions, should be the first to be dismissed in the event of staff reductions. In other countries<sup>45</sup> the provisions governing the procedure of staff reductions and the reinstatement of dismissed workers apply only to nationals.

335. Some governments refer to practices which may have the effect of limiting the access of foreigners to vocational training. In

one country<sup>46</sup> only nationals have access in principle to the services provided by the training centres. In another, <sup>46bis</sup> the access of foreigners to vocational training is subject to a residence qualification. One government<sup>47</sup> reports that, although the vocational training legislation makes no distinction between nationals and foreigners, the latter must, if they wish to take a course of apprenticeship training, obtain an authorisation which is granted only after examination of the apprenticeship situation. In another country<sup>48</sup> foreigners do not have access to the vocational training courses organised by the public authorities during the period in which they are subject to restrictions as regards access to employment. Vocational training is not an end in itself but must be employment-oriented. In so far as given jobs are not open to foreigners during a given period, vocational training for these jobs is of doubtful value. It should, moreover, be noted that Article 14(a) of Convention No. 143 allows restrictions on free choice of employment for a limited period which must not exceed two years.

336. As expressly provided by Article 6, paragraph 1(b), of Convention No. 97, it is important for migrant workers to have access to the courts in the same conditions as nationals if they are to exercise their rights effectively. This is not the case in one country,<sup>49</sup> where foreigners may not institute legal proceedings without depositing a security to cover the costs of the proceedings and are entitled to legal aid only on a reciprocity basis. The government states, however, that the repeal of these provisions is under study.

337. As regards general conditions of life, it would appear from the information available that foreigners generally enjoy equal treatment, at least in law. This is particularly so as regards access to social services (see on this question paragraph 441 below) and to educational and health facilities. In one country,<sup>50</sup> however, the legislation gives priority to nationals as regards access to low-cost housing. Another government<sup>51</sup> states that owing to the structure of co-operatives, foreign workers cannot be full members of them.

(b) Special problems concerning  
access to employment

338. As has already been stated, equality of opportunity and treatment as provided for by Article 10 of Convention No. 143 also covers access to employment. The application of this principle does not, however, imply that any foreigner has the right to demand freedom of access to employment on the territory of a State which has accepted the obligations of Part II of Convention No. 143, since the latter applies only to migrant workers and their families lawfully within the territory. It is only once he has been admitted to a country of immigration for purposes of employment that a worker will become entitled to the protection provided for in this part of the Convention. Article 10 does not therefore affect the right of a State to admit or refuse to admit a foreigner to its territory; nor is its purpose to regulate the issue or renewal of residence or work permits. It is only when such documents contain restrictions or conditions contrary to the principle of equality of opportunity and treatment laid down in Article 10 of Convention No. 143 that States may have to amend their law or practice in accordance with Article 12(d).

339. Article 14 of the Convention authorises certain restrictions on the principle of equality of treatment as regards access to employment. Some of these, which are general in scope,

authorise States to make the free choice of employment subject to temporary restrictions during a prescribed period which may not exceed two years (Article 14(a)). Others, which are of a specific nature, allow permanent restrictions to be imposed on access to limited categories of employment or functions where this is necessary in the interest of the State (Article 14(c)).

(1) General restrictions

340. Article 14(a) of Convention No. 143 provides that a Member may:

make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts of a fixed term of less than two years, that the worker has completed his first work contract.

341. It should be recalled that Recommendation No. 86, Paragraph 16 of which already advocated equality of treatment as regards access to employment, authorises temporary restrictions for a period of five years. This was the period originally proposed by the Office in its law and practice report.

342. Article 14(a) of Convention No. 143 makes a distinction between restrictions on free choice of employment which may be authorised by the national legislation for a certain period and the right to geographical mobility, which must be assured whatever the duration of the residence or employment.

Restrictions on free choice of employment

343. The legislation of most countries, with the exception of those where immigrants are permanently admitted on arrival, contains restrictions which may affect free choice of employment. These restrictions may directly limit the access of migrant workers to employment by regulating the circumstances in which they may change jobs or by establishing priorities for employment in favour of national workers. The employment of migrant workers is indirectly affected by other limitations such as statutory provisions requiring employers to obtain authorisation to employ foreign workers or fixing the proportion of national workers who must be employed in an undertaking.

344. The practices followed in different countries as regards direct restrictions on the circumstances in which a worker may change his job vary in restrictiveness. In many countries work permits are issued to foreigners - at least during the initial period - for a given post in an undertaking<sup>52</sup> or for a given employer.<sup>53</sup> This also appears to be the case in countries<sup>54</sup> which distinguish between permanent and temporary immigrants, in respect of the latter category. In certain cases authorisation may be granted for a given occupation or branch of activity without being limited to a single employer, either from the start of the initial period of employment<sup>55</sup> or when certain conditions of residence and employment have been fulfilled.<sup>56</sup>

345. When the permit is issued for a given post or a given employer, the worker may change his employment or employer only under

certain conditions. This is also the case with changes in the authorised occupational categories. In some countries<sup>57</sup> a worker may not in principle change employers during the first year. In others<sup>58</sup> workers holding a work permit issued for a given occupation may not as a rule engage in an occupation other than that authorised by the permit. Moreover, in most cases<sup>59</sup> the authorisation to change employer or occupation is granted only after an examination of the employment market situation.

346. In a number of countries<sup>60</sup> the employer may employ a foreign worker only if he has been authorised to do so. This authorisation, which is necessary for the employer, must be distinguished from the work permit, which is necessary for the worker. The legislation of some countries<sup>61</sup> requires both an employment authorisation and a work permit. Although the employment authorisation must be obtained by the employer, it is none the less restrictive in its effects on the occupational mobility of foreign workers, since they may not be hired by employers who have been refused employment authorisations. Depending on the case, an employment authorisation will be granted only if warranted by the employment market situation<sup>62</sup> or if the quota of foreign workers which has been fixed for each undertaking is not exceeded.<sup>63</sup>

347. Restrictions on the employment of foreigners, by means of work permits or employment authorisations, are generally imposed during a preliminary phase and are progressively relaxed after a prescribed period of residence or employment, when the worker acquires the status of a permanent resident or becomes entitled to an unrestricted work permit. The duration of such restrictions on employment varies considerably from one country to another. Apart from a limited number of cases where migrant workers are admitted on a permanent basis on arrival<sup>64</sup> or where the right to free choice of employment is in principle acquired after one year of residence,<sup>65</sup> the available information indicates that restrictions on occupational mobility fixed by national legislation cover periods ranging from three to ten years,<sup>66</sup> whereas the maximum period authorised by Article 14(a) of Convention No. 143 is two years. There are, however, only three countries<sup>67</sup> in which the limit exceeds five years. In certain cases its duration may be reduced for nationals of countries with which bilateral or multilateral manpower agreements have been concluded.<sup>68</sup> Moreover, restrictions on employment may be abolished for workers from countries belonging to a zone of free movement of labour.<sup>69</sup>

348. Although it is normal for restrictions on the possibility of changing jobs to be progressively relaxed on the expiration of a period prescribed by national legislation, this is not always the case. One government,<sup>70</sup> whose immigration policy makes a distinction between immigrants admitted on a permanent basis and temporary migrant workers, states that permits are granted for the latter only for a specific period and a specific job; these workers may thus not change employment without obtaining a new permit, whatever the duration of their stay in the country. This also seems to be the situation in certain developing countries,<sup>71</sup> whose policies aim at promoting the employment of nationals, and in some countries,<sup>71bis</sup> traditionally considered countries of emigration, which are experiencing a modification of migratory movements.

349. Restrictions on the access to employment of foreign workers may also be the result of employment priorities in favour of national workers. In some cases<sup>72</sup> priority will be given to nationals followed by certain privileged categories of foreigners belonging to the same

community. In certain countries<sup>73</sup> the legislation obliges employers to give preference to nationals. In other countries<sup>74</sup> the employment service is responsible for ensuring that the priorities established in favour of nationals are observed. In both cases this situation would appear to be contrary to the principle of equality of treatment as regards access to employment when it exceeds the period allowed by Article 14(a) of Convention No. 143. In a number of countries, however, it seems that priority is granted only over foreigners who do not reside in the country.

350. In one country,<sup>74bis</sup> a list of occupations closed to foreigners is laid down by law. When such a prohibition is permanent, it is contrary to the principle of equal treatment, unless it is limited to the categories of employment or functions which it is necessary to reserve for nationals in the interests of the State (see paragraphs 357 to 359 below).

351. Equality of access to employment presupposes that foreigners have the right of access to employment services in the same conditions as nationals. This is not always the case, since in certain countries<sup>75</sup> only nationals may be registered with the employment services.

352. Certain provisions<sup>76</sup> fix the maximum percentage of foreign workers who may be employed in an undertaking. In certain cases the total wages which may be paid to foreigners are also subject to a quota. Depending on the composition of the foreign workforce, provisions of this kind may involve the risk of restricting the possibilities of access to employment, at least for certain occupational categories of foreign workers.

353. The exemptions provided for by Article 14(a) of Convention No. 143 also apply to members of migrant workers' families, although they are not expressly mentioned. In so far as family members have not acquired permanent residence status or an unrestricted work permit, they may not usually take a job without a permit,<sup>77</sup> the issue of which will in principle depend on the employment market situation and may be subject to a residence qualification.<sup>78</sup> It would also seem that restrictions on employment in a number of countries cease to be applied to members of migrant workers' families when they are lifted for the workers themselves.<sup>79</sup> One country,<sup>80</sup> however, indicates that it has abolished the derived right of the spouse to an unrestricted work permit.

#### Geographical mobility

354. Article 14(a) of Convention No. 143 expressly stipulates that national legislation may not restrict the right to geographical mobility of migrant workers lawfully within the territory, which they must enjoy from the beginning of their stay in the same conditions as national workers.

355. One government<sup>81</sup> points out that, although migrant workers in principle enjoy the right to geographical mobility, the existence of this right is conditional upon the issue of an employment authorisation for the job concerned. This situation is not incompatible with Article 14(a) of Convention No. 143. In adopting this provision, it was the intention of the Conference to proscribe legislative provisions or administrative practices restricting the freedom of movement of foreign workers legally within the territory such as those authorising them to



reside only in a given region or prohibiting their entry to certain areas. Article 14(a), on the other hand, does not prevent the imposition - at least during the preliminary phase - of certain restrictions on access to employment which may have an indirect effect on geographical mobility, such as work permits issued for a given post or employer or permits valid for a given region.<sup>82</sup>

356. In federal States<sup>83</sup> the principle of geographical mobility may raise certain difficulties when the constitutional system allows the constituent units freedom to admit or refuse to admit a foreigner to their territory, since foreign workers who are lawfully admitted to the territory of one unit of the federation may not be authorised to transfer their residence to that of another. In view of the flexible wording of Article 12 of Convention No. 143, a solution to these problems may be found by "methods appropriate to national conditions and practices", without affecting the division of powers between the federal State and its constituent units.

(ii) Restrictions necessary in the interests of the State

357. Under Article 14(c) of Convention No. 143 States may "restrict access to limited categories of employment or functions where this is necessary in the interests of the State". Unlike clause (a) of Article 14, which authorises general restrictions on access to employment for brief periods, this provision allows foreign workers to be permanently excluded from certain categories of employment or functions.

358. In some countries restrictions on the employment of foreigners are confined to certain specified posts in the national administration<sup>84</sup> or certain posts in the fields of national defence and security.<sup>85</sup> Generally speaking, however, foreign workers do not appear to have access to the civil service, at least to the permanent establishment. In certain cases this exclusion may also extend to enterprises in the public sector.<sup>86</sup>

359. The concept of "public service" may cover a wide range of activities, which may vary considerably from one country to another. This is also true of public undertakings. In these circumstances it might be useful for governments to re-examine their law and practice in the light of the criteria mentioned in Article 14(c) of the Convention. This provision allows restrictions on the access of foreigners to employment provided that two conditions are fulfilled. Firstly, the exceptions must relate only to "limited categories of employment or functions" and secondly they must be necessary "in the interests of the State". The Convention thus envisages situations where the protection of the interests of the State justifies the reservation of certain employment or functions, by reason of their nature, to the citizens of that State.<sup>87</sup>

(iii) Recognition of occupational qualifications acquired abroad

360. In many countries the completion of certain training or study courses is a necessary condition for the holding of certain jobs or the exercise of certain occupations. This is often a general requirement, which applies both to nationals and to foreigners, and does not imply formal inequality of treatment based on nationality.

However, the difficulties which foreign workers may face in obtaining recognition of the occupational qualifications which they have acquired abroad, may in practice result in their being refused access to certain jobs and to occupational advancement. It is accordingly important for States to make use, as far as possible, of the possibility provided under Article 14(b) of Convention No. 143, according to which they may "after appropriate consultation with the representative organisations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside [their] territory, including certificates and diplomas".

361. Initiatives have been taken along these lines in several countries,<sup>88</sup> both in the public and private sectors. In certain cases the legislation<sup>89</sup> provides for the recognition of foreign diplomas, subject to the existence of certain guarantees regarding the level of the knowledge acquired. In other cases<sup>90</sup> special committees have been set up to advise the competent authorities and the employers on the value of the technical and academic knowledge acquired abroad. These bodies may make comparative studies and on-the-spot surveys in order to ascertain the level of occupational qualifications in other countries by comparison with the national standards. For this purpose they make and maintain contact with other organisations fulfilling similar functions in other countries.

362. Noteworthy efforts have also been made at the international level. UNESCO, for instance, has embarked on a programme which is to culminate in the preparation of an international Convention on the mutual recognition of titles, degrees and diplomas awarded by higher learning and research institutions in all countries. Certain regional, governmental<sup>91</sup> or non-governmental<sup>92</sup> organisations have also made efforts to promote the international recognition of diplomas and qualifications. Finally, some countries have mentioned international agreements on this subject.<sup>92bis</sup>

#### 4. Legal protection against discriminatory acts

363. The provision in Article 12(b) of Convention No. 143 that States shall "by methods appropriate to national conditions and practice, enact such legislation ... as may be calculated to secure the acceptance and observance of the policy" of equal opportunity and equal treatment is modelled on a corresponding provision of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

364. Although Convention and Recommendation Nos. 111 do not cover discrimination on the basis of nationality, they do extend to grounds which may form the basis for discrimination in practice against migrant workers and their families, who may be the victims of prejudice by reason of their race, colour, religion, national extraction or social origin rather than their foreign nationality as such. For this reason, several of the legislative provisions and enforcement procedures considered in the general surveys of the 1958 instruments may be useful weapons in seeking to combat discrimination against immigrants. Reference is accordingly made to the relevant paragraphs of the earlier surveys;<sup>93</sup> this section of the present survey will be confined to considering general anti-discriminatory legislation and machinery introduced since the 1971 survey and provisions designed to ensure equal opportunities and treatment specifically for migrant workers.

(a) Legislation prohibiting discrimination

365. Two countries have recently introduced anti-discrimination legislation which, while it is primarily aimed at racial discrimination, applies to discrimination on the grounds of "colour, race or ethnic or national origins"<sup>94</sup> or "race, colour, descent or national or ethnic origin",<sup>95</sup> and accordingly, as indicated in the preceding paragraph, may be relevant to the problems of certain immigrants who may face discrimination on these grounds rather than on the basis of their nationality. In both cases the legislation applies to employment (engagement, terms and conditions, training, promotion, dismissals, access to the services of employment agencies), the disposal and conditions of occupation of land, housing and other accommodation, access to places, vehicles and facilities available to the public, the provision of goods and services offered to the public and, in one case,<sup>96</sup> the right to join trade unions. Discriminatory advertisements are prohibited. One country,<sup>97</sup> in which the adoption of similar legislation had been noted in the 1971 survey, has recently amended its legislation to include "nationality" as one of the grounds on which discrimination is prohibited. Comprehensive legislation of this kind is generally accompanied by machinery for its enforcement, an aspect which is considered later in this section.

366. In some cases, provisions expressly prohibiting discrimination on grounds of nationality are contained in more general legislation, such as the Labour Code. Such prohibitions may relate to the terms and conditions of employment generally,<sup>98</sup> or be limited to remuneration.<sup>99</sup> In the case of provisions of this kind, it is important that they should be legally enforceable by migrant workers in whose case they are not respected, as is foreseen in one of the Labour Codes examined<sup>100</sup> which provides that if a foreign worker's remuneration is fixed at a rate lower than that of nationals he has the right to demand that it be aligned with the remuneration for nationals.

367. Another method of providing legal protection against discriminatory treatment of migrant workers adopted in some countries is to include in the legislation governing the employment of foreigners provisions guaranteeing equal treatment with nationals in respect of conditions of employment,<sup>101</sup> or providing that authorisations to employ foreign workers will only be granted to employers on condition that the workers concerned enjoy the same remuneration and terms of employment as nationals.<sup>102</sup> Similar guarantees are sometimes included in bilateral agreements. Thus the agreements concluded by one country of immigration<sup>103</sup> provide that the workers immigrating under their provisions shall enjoy equal conditions with nationals in respect of remuneration and terms of employment, within the framework of the legal provisions, local or occupational practice and, if applicable, collective labour agreements.

368. In one country,<sup>104</sup> a collective agreement has been concluded between the central employers' and workers' organisations providing that foreign workers may not be given less favourable treatment than the majority of comparable national workers in the undertaking as regards remuneration, and other employment and social conditions.

369. A further form of legislative action against discrimination is the introduction in one country<sup>105</sup> of penal sanctions, in the form of imprisonment and/or a fine, for the refusal to employ or the dismissal of a worker by reason of his origin or his belonging or not belonging to a particular ethnic group, nation, race or religion.

(b) Enforcement machinery

370. The enforcement of provisions of the labour legislation and criminal law designed to ensure equality would normally fall to the authorities responsible for ensuring their observance, in particular the labour inspection authorities, industrial relations bodies and the courts. For the effective enforcement of provisions of this kind on the initiative of an aggrieved individual migrant worker, what may be needed is advice and assistance to help him bring his complaint to the attention of the competent body: this is a matter which is dealt with later in this chapter in paragraphs 399 to 401 and in chapter V, section 3 concerning social services.

371. Bilateral agreements concerning migration for employment normally contain provisions designed to ensure their application. In particular, they provide that the consular authorities of the country of origin of the migrant workers may present to the authorities of the countries of employment any complaints and claims relating to the application of the agreement; and that a joint commission composed of delegates from the States Parties may be set up to examine problems and seek solutions. Machinery of this kind provides a channel through which migrant workers can obtain the assistance of the authorities of their home country in having their cases investigated when provisions of bilateral agreements requiring equality of treatment are not respected.

372. The type of machinery which has been set up to secure the observance of general anti-discrimination legislation was described in the Committee's general survey of 1971.<sup>106</sup> Further measures of this kind have been introduced in connection with new anti-discrimination laws. Thus one country<sup>107</sup> has appointed a conciliator to investigate suspected discriminatory practices or acts - either on his own initiative or on the basis of a complaint, which need not come from a person affected - to seek to conciliate and secure a settlement of individual cases of discrimination. If the conciliator is unable to effect a settlement he may recommend the institution of civil proceedings. These proceedings are in principle brought by the government law officer; it is only if he fails to follow the recommendation that the aggrieved person may himself bring an action. The remedies available in such proceedings include damages and an injunction against continuing discriminatory action. Similar machinery is instituted under the legislation of another country,<sup>108</sup> the principal differences being that it is for the aggrieved person himself to institute proceedings if the conciliation procedure fails and that the court may, in addition to granting an injunction and damages, order the defendant to take action to place the aggrieved person in the position in which he would have been if he had not been the victim of discrimination.

373. One country which had earlier introduced conciliation and enforcement machinery of this kind has since reinforced it, as well as extending it to cover discrimination on the basis of nationality. Under the new legislation<sup>109</sup> proceedings may be brought by the complainant before an industrial tribunal in cases of discrimination in employment or before the civil courts in other cases. The Commission for Racial Equality, which replaces the earlier bodies, has power to conduct investigations, to make recommendations both generally to the government for changes in the law or otherwise, and in individual cases for changes in policies or procedures with a view to promoting equality of opportunity, and to issue non-discrimination notices which it can if necessary enforce by taking legal action. The Commission may also

issue codes of practice on the elimination of discrimination and promotion of equality in the employment field, and may provide assistance to an aggrieved individual in bringing proceedings where the case raises a point of principle or where the circumstances are such that it is unreasonable to expect the complainant to deal with the case unaided. A further innovation to help individuals is the issue of standard forms on which the aggrieved person may put questions to the person responsible for the treatment he is complaining of and on which the latter can reply. As is stated in a guide to the legislation<sup>110</sup> published by the authorities:

The exchange of questions and answers will focus attention on what would have to be shown in order to prove unlawful discrimination, but the main purpose is to establish as far as possible both the facts of the grievance and, in particular, the reasons why the respondent took the action complained of. In some cases the exchange of information may show the complaint to have been groundless, or based on a misunderstanding. In others it may result in a settlement so that legal proceedings are unnecessary. Where proceedings are instituted, it should help to simplify them by identifying in advance what is agreed and what is in dispute between the parties.

374. As is illustrated by the above examples, legislation is not in itself sufficient to outlaw discrimination. It needs to be supplemented by effective machinery and practical measures, in particular because the migrant workers themselves, by reason of the very facts which lay them open to discrimination, may not be in a position to take the initiative to secure respect for the legislation, for example, through ignorance or fear of reprisals. It is for this reason that procedures of the kind described above, under which independent persons or bodies are able to take the initiative in investigating violations and enforcing the application of the legislation, are a particularly useful supplement to normal procedures under which the initiative lies with the aggrieved person himself.

##### 5. Measures designed to promote equality of opportunity and treatment

375. As is clear from the contents of the migrant workers' instruments themselves as well as from governments' reports, it is generally recognised that the absence of discriminatory legislation, or even the existence of legislation prohibiting discrimination and providing remedies against infringements, is not sufficient to ensure equality of opportunity and treatment in practice. Positive action to secure acceptance and observance of the principle of non-discrimination by society generally, and to assist migrant workers and their families to make use of the equal opportunities offered them, are essential elements in the policy provided for in the 1975 instruments.

376. Article 12 of Convention No. 143 sets out a number of measures to be taken, by methods appropriate to national conditions and practice, to promote the effective observance of the policy of equality of opportunity and treatment. These include the contribution to be made by employers' and workers' organisations and other appropriate bodies, measures to inform and educate the public and educational programmes and other measures to assist migrant workers and their families to exercise their rights and to share in advantages enjoyed by nationals. These three types of action will be considered in the following paragraphs.

(a) Co-operation with employers' and workers' organisations and other bodies

377. Article 12(a) of Convention No. 143 calls on States to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of national policy in respect of migrant workers.

378. An important means of securing such co-operation is to associate these organisations in the formulation of national policy in regard to immigrants and in measures to implement that policy. One government,<sup>111</sup> for example, established a special commission, in whose work representatives of the employers' and workers' organisations participated, to work out a global national policy on the employment of migrant workers and the social integration of their families; the commission's recommendations formed the basis of the government's present policy, which is being implemented in close collaboration with all those concerned.

379. In a number of countries,<sup>112</sup> employers' and workers' organisations are represented in a national body responsible for migrant workers' questions, which is consulted on such matters as immigration policies and practices, questions relating to the employment of foreign workers and measures to assist migrant workers and their families to adapt to the host society.

380. An interesting example of the close association of employers' and workers' organisations in action on behalf of migrant workers is their representation on the management committee of one country's<sup>113</sup> Immigration Service, which is responsible for encouraging, supporting and co-ordinating the activities of other services on behalf of immigrants, for providing assistance to immigrants in adapting to life in the host country, for arranging housing for immigrants, for proposing further measures to assist immigrants and, in particular, for collaborating with the national employers' and workers' organisations on questions concerning the working environment and social security of immigrants and their families. A further example worthy of notice is the recent creation in one country<sup>114</sup> of an Employment and Immigration Commission composed of four members of whom one represents labour and one management; these members are appointed after consultation with their representative organisations and maintain close liaison with their constituent groups to ensure that the Commission's decisions are taken in the light of the groups' positions.

381. As well as collaborating with the public authorities, employers' and workers' organisations can themselves play an important part in promoting equality of opportunity and treatment for migrant workers, although very little information has been provided in governments' reports on measures taken by the occupational organisations themselves.

382. One means of action open to them is the inclusion of appropriate provisions in collective agreements. In one such agreement,<sup>115</sup> for example, the national employers' and workers' organisations undertook to ensure respect for the principle, laid down by Parliament, that work permits would only be granted on condition that the foreign workers had the same wages and working conditions as nationals. The local trade unions were assigned responsibility for ensuring respect for this principle at the workplace, and provision was made for individual collective agreements with the employers authorised to engage foreign workers. Other collective agreements<sup>116</sup> contain

special provisions designed to cater for the particular needs of migrant workers, for example by granting them time off to attend language courses or authorising Moslem workers to observe their religious festivals or giving them the right to resume work after leave to visit relatives in their home country; these agreements may also be issued in the principal languages of the migrant workers affected by them.

383. The information made available in the course of the preparatory work<sup>117</sup> shows that trade unions may provide direct assistance to migrant workers, for example by setting up specialised offices to which they can come for advice on employment matters, or permanent committees to deal with occupational and social problems including such matters as housing and schooling, or by publishing brochures and periodicals in the principal immigrants' languages giving practical information on administrative formalities, working and living conditions, etc. The contribution which employers' and workers' organisations can make to the provision of social services for immigrants is indeed recognised in Paragraph 25(2) of Recommendation No. 151. However, virtually no information has been provided on this aspect of trade union activities on behalf of immigrants, except by two countries. In one,<sup>118</sup> the central trade union organisation, as well as organising courses on occupational safety and health and producing publications in the foreign workers' languages, has concluded an agreement with the central workers' organisation of the principal country of origin of foreign workers, under which special trade union sections are established in each undertaking employing more than 15 workers from the country in question, to look after the interests of those workers. The works committee and the district trade union committee are required to examine problems relating to the foreign workers concerned at least twice a year. In the other,<sup>119</sup> the trade unions provide facilities for clubs and leisure activities for migrant workers.

384. Another aspect of the contribution which employers' and workers' organisations can make to national policy in respect of migrant workers is by informing and educating their members in order to gain their acceptance and support in the implementation of the policy: the attitudes of employers and of fellow workers at the workplace will indeed play a large part in determining the extent to which migrant workers in fact enjoy equal opportunities and equal treatment. It would seem appropriate that the occupational organisations should be used as a channel for providing information for fellow workers and foremen and supervisors about the situation and the problems of migrant workers, a task assigned to the social services for migrants by Paragraph 24(e) of Recommendation No. 151. These organisations will be all the better equipped to provide support of this kind to national policy if they are directly associated in the formulation of that policy as in the cases referred to in paragraphs 378 to 380 above. Although no reference has been made in governments' reports to measures taken to this end by national organisations, one government<sup>120</sup> has referred to legislation which lays on the works council established in each undertaking responsibility for promoting good relations between migrant workers and national workers, and encouraging the integration of the former.

385. In spite of the absence of information on this point, it can be expected that employers' and workers' organisations do play an active role in creating positive attitudes among their members, and they should certainly be encouraged to do so. One government<sup>121</sup> has referred to action taken to assist them in playing such a role, namely

the establishment within the Department of Employment of a Race Relations Advisory Service to advise employers, trade unions and others on the employment provisions of the race relations legislation (which covers discrimination on grounds of nationality and ethnic or national origin as well as on grounds of colour or race), on cultural or religious differences among ethnic minority groups and on language training needs and facilities. In another country<sup>122</sup> steps have been initiated to develop courses, in liaison with the Trade Union Training Authority and the Public Service Board, to sensitise trade union leaders as well as public service staff to the needs of immigrant communities.

(b) Informing and educating the public

386. If migrant workers and their families are to adapt successfully to life in the host country, and enjoy effective equality of opportunity and treatment not only in respect of employment and occupation but also in respect of the other matters listed in Article 10 of Convention No. 143, it is necessary to ensure that national policy is accepted and observed not only by employers and workers but also by the members of society generally. It is with this end in view that Article 12(b) of Convention No. 143 speaks of promoting "such educational programmes as may be calculated to secure the acceptance and observance of the policy" and that Paragraph 4 of Recommendation No. 151 specifies that appropriate measures should be taken to foster public understanding and acceptance of the principles of equality.

387. These provisions of the 1975 instruments are modelled on corresponding provisions in the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958, which cover discrimination on grounds, inter alia, of race, colour, religion, national extraction or social origin. Since these are grounds which may be relevant to public attitudes to certain categories of migrants, the measures taken to combat prejudice on such grounds may also serve to combat prejudice against immigrants. The Committee accordingly refers to its general surveys of 1963 and 1971 on discrimination in employment and occupation, in which it considered measures to educate and inform the public with a view to securing acceptance and observance of national policies to promote equality of opportunity and treatment.<sup>123</sup> It would be desirable that these measures be expanded and adapted to cover policies in favour of migrant workers and their families in so far as they do not already do so.

388. A further instance of action of the type described in the 1971 survey and taken since then, is the establishment in one country<sup>124</sup> of a community relations council to advise and make recommendations on the observance and implementation of the legislation prohibiting discrimination on grounds of race, colour, descent or national or ethnic origin and to promote educational programmes, studies and research, the publication and dissemination of relevant material as well as promoting understanding, tolerance and friendship among racial and ethnic groups.

389. In addition to measures designed to inform and educate the public about policies of non-discrimination generally, some governments have referred in their reports on the migrant workers' instruments to information and educational programmes specifically geared to securing the acceptance by the national population of migrant workers and their families as equal members of society. These include radio and television broadcasts covering both the needs and problems of



immigrants in the host country and the culture and way of life in their countries of origin.<sup>125</sup> In some countries<sup>126</sup> one of the functions of the social services described in chapter V, section 3 below, is to provide the public with general information on matters relating to immigrants with a view to securing the community's acceptance of national policy in this area. This may be done by such means as advertising campaigns in the mass media, periodic bulletins and brochures describing the different countries of origin and a service to respond to requests for information, whether in writing, by telephone or in person.

(c) Educational programmes and other measures for migrants

390. An important means of promoting effective equality of opportunity and treatment for migrants is by equipping them to exercise the rights and to take advantage of the facilities offered to them in the host country. It is therefore important, as is spelled out in Article 12(c) and (e) of Convention No. 143, that they should be fully informed of their rights and obligations, that they be given effective assistance in the exercise of their rights and that social policy should enable them to share in advantages enjoyed by nationals while taking account of any special needs they may have during their period of adaptation to the society of the host country.

391. Assistance to migrants at the time of arrival and during the initial period of adaptation has already been considered in chapter II in connection with the reception of immigrants, where reference was made in particular to services designed to provide immigrants with detailed information on working and living conditions in the host country, to give them initial advice and assistance in settling in and obtaining access to services available to residents generally, and to make available interpretation and translation facilities.

392. Clearly, measures of this kind are an essential preliminary step in familiarising immigrants with national policy in relation to migrant workers and in acquainting them with their rights and obligations under it and with activities designed to assist them, as required by Article 12(c) of the Convention. If, however, immigrants are to be enabled to share in the advantages enjoyed by nationals, as is specified in Article 12(e), measures are needed to assist them on a longer term basis.

393. A first essential in the case of many immigrants is to provide them with sufficient knowledge of the language of the host country, and it seems to be general practice for countries of immigration to make language courses available for immigrants. A useful illustration of the range of facilities which may be provided for this purpose may be found in one country<sup>127</sup> which has a particularly well developed adult migrant education programme. This combines language teaching with an introduction to the national way of life and includes full and part-time courses at varying levels of intensity, evening continuation classes to follow up an initial intensive course, courses in industry, a home tutoring scheme, classes for women, correspondence courses and radio and television teaching. A wide-ranging series of courses of this kind makes it possible to cater for the needs of immigrants with differing levels of education as well as for the needs of their dependent relatives of varying ages.

394. In some cases, special provision is made to enable migrant workers to take language classes during working time. Thus one

country's<sup>128</sup> legislation provides for 240 hours' paid leave for language training, and in another,<sup>129</sup> language teaching is provided at the workplace during working hours through special units funded by the employment authorities. In a third country,<sup>130</sup> an agreement has been concluded between the central employers' and workers' organisations accepting that it can be made a condition of a work permit that the employer shall grant leave of absence to a worker wishing to participate in language classes. In yet a further country,<sup>131</sup> language training is treated as a form of continuing training and financed partly by the State and partly by employers' contributions.

395. Several governments<sup>132</sup> have mentioned special arrangements for teaching the language of the host country to children of migrant workers. This is usually done within the framework of general schooling, through intensive courses or special adaptation classes designed to enable the children to join in the normal school curriculum as soon as possible. One government<sup>133</sup> has described its integration programme for young persons, which combines language teaching with special guidance courses aimed at social integration as well as vocational orientation.

396. Some countries<sup>134</sup> have referred only in general terms to the provision of language teaching, usually through the local education or training authorities or voluntary agencies. In some cases, they have indicated that the courses are free or subsidised by the State.

397. Language training is not necessarily the only form of special training which migrant workers will need. In many cases it will indeed be sufficient to enable them, when the opportunity arises, to accede to further training or retraining on the same basis as nationals, but in some cases - for example those of unskilled workers or workers from very different cultural backgrounds - special assistance may be necessary to qualify them to follow the generally available training courses. Recognising this need one country,<sup>135</sup> which has for some years attached importance to the vocational training of its migrant workforce, has introduced a form of "pre-vocational training" designed to prepare foreign young persons and adults for vocational training proper. It is open both to work seekers and to employed persons and financed by the State, which also pays an allowance to unemployed trainees and contributes to the wages of employed trainees. Persons completing these courses are eligible for further training in the same way as nationals, as are other migrant workers capable of benefiting from it, and it is government policy to encourage migrant workers to take advantage of the training facilities thus open to them.

398. If migrant workers are to enjoy equal opportunities with nationals in obtaining the employment of their choice, as is required under Convention No. 143 after two years' residence, it is important that the facilities of the national employment service should be readily accessible to them, and that this service should be equipped to deal with their special needs and problems. Certain measures have been taken in member States to this end. In one country, an interpreter service<sup>136</sup> is provided in the provincial employment offices; in another<sup>137</sup> a placement and information service for foreigners has been set up in two county employment offices, in the capital and in one other centre. A third country<sup>138</sup> issued in 1977 a circular to the administrative services concerned with the object of facilitating the registration of foreigners as applicants for employment and their access to the services of the employment offices. The circular indicates in particular that all foreigners with a work permit may

register as work seekers even if their permit is subject to occupational or geographical restrictions: if they are seeking work outside these restrictions, they must be informed of the procedures and formalities for having the restrictions altered.

399. Another area in which it may be particularly important to ensure that migrant workers enjoy access in practice to the institutions of the host country is that of enforcement procedures. If they are to be able to exercise effectively their right to equal treatment by their employer, it may be necessary in the last resort for them to institute legal proceedings. For this purpose, it is important that they have access to the courts on the same basis as nationals, and that the necessary facilities be provided to enable them to exercise their right of recourse to the courts. Some governments<sup>139</sup> have stated that interpretation facilities are available in court proceedings; in one case<sup>140</sup> these are free only where the plaintiff is legally aided. It would seem desirable that migrant workers should have access to the courts to enforce their rights without having to risk themselves incurring the cost of providing interpretation.

400. Legal action is normally only turned to as a last resort. In many countries the national system of labour relations provides conciliation or arbitration procedures for examining and trying to settle individual grievances. Also, as indicated above, remedies may be available under anti-discrimination legislation.

401. The migrant worker who feels that he is not being granted equal treatment may well need advice or assistance in helping him to decide which of the available procedures would be most appropriate, and to take the necessary action to bring his complaints before the competent body. This is a function which the trade unions would seem well equipped to perform, as is the case in one reporting country.<sup>141</sup> In another<sup>142</sup>, the Government has indicated that the Industrial Relations Bureau, established under its conciliation and arbitration legislation, provides a focal point for non-English speaking workers to obtain assistance where they are concerned about their rights as employees and union members. Advice and assistance to aggrieved persons may also be available under the procedures for the enforcement of anti-discrimination legislation considered earlier.

402. In general, however, it seems that it is the social services, provided for in Paragraphs 23-29 of Recommendation No. 151, and examined in chapter V, section 3 below, which give migrant workers and their families the advice and assistance which they may need in exercising their rights and obtaining access to the services and facilities enjoyed by nationals. Indeed, it is recognised in Paragraph 24(b) of the Recommendation that this is one of their principal functions. Reference may therefore be made in particular to paragraphs 443 to 450 of the next chapter.

## 6. Preservation of national and ethnic identity

403. Article 12(f) of Convention No. 143 requires ratifying States to:

take all steps to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue.

404. As is made clear by this provision, the effective enjoyment of equality of opportunity and treatment in respect of cultural rights calls for a policy which enables migrant workers and their families to profit fully from their national and cultural heritage, as do nationals of the country of employment.

405. It should be noted that the Convention places the initiative in preserving their national and ethnic identity on the migrants themselves. Ratifying States are required to "assist and encourage" the efforts of migrant workers and their families to this end "by methods appropriate to national conditions and practice". They are not required themselves to take the initiative in this matter, but simply to assist and encourage immigrants in doing so.

406. Convention No. 143 makes express mention of teaching their mother tongue to the children of migrant workers. This is an area in which a variety of arrangements exist in member States. In several cases<sup>143</sup> bilateral agreements have been concluded between immigration countries and countries of origin under which teaching in the mother tongue, covering both language and culture, is provided within the framework of the normal school system, with teachers coming from the country of origin. Other countries<sup>144</sup> have referred to similar arrangements without indicating that they were introduced pursuant to bilateral agreements. In two of them,<sup>145</sup> special courses are held for bilingual teachers.

407. Another alternative is to provide assistance to schools run by the immigrant communities themselves. These schools may provide a complete education,<sup>146</sup> more particularly when the family is expected to stay in the country of immigration only for a limited period, or may provide supplementary teaching outside normal school hours.<sup>147</sup>

408. Further measures mentioned include the placing of school premises at the disposal of the consular authorities of countries of emigration which organise mother-tongue teaching<sup>148</sup> and the establishment of bilingual schools.<sup>149</sup>

409. As well as mother-tongue teaching, Convention No. 143 refers more generally to the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin. Mention has been made in government reports of a variety of measures taken to assist immigrants in this way.

410. Radio and television broadcasts can provide a useful means of maintaining national and cultural links, and some countries<sup>150</sup> have referred to measures taken and planned to develop programmes in the languages of the principal immigrant communities. These programmes are designed both to present news about the home country and to help immigrants to maintain their own culture and pass it on to their descendants. One government<sup>151</sup> indicates that its broadcasting corporation has a permanent correspondent in one of the countries of origin. In addition, one country<sup>152</sup> publishes a weekly newspaper in five languages, which includes a "national section" containing news of interest to the different nationalities. Another<sup>153</sup> makes available newspapers and periodicals from the countries of origin in the reading rooms of its public libraries, as well as including library services for immigrants in eight languages within its public library system through a central library in the capital with depots of books at twenty centres in the provinces; records of folk music from home countries are also available through the public record libraries. Library facilities in immigrants' languages are provided in another country<sup>154</sup> through mobile libraries.

411. Assistance is provided in some countries to immigrants' associations established to provide a forum for cultural and leisure activities. This may take the form of government or local authority grants and subsidies,<sup>155</sup> advice and assistance from a government agency on organisational matters<sup>156</sup> or of practical assistance in making available club premises for use for leisure and cultural activities, for example by trade unions or national voluntary organisations.<sup>157</sup>

412. A final measure taken in some countries, usually through bilateral agreements with the country of emigration<sup>158</sup> or, as already indicated above, through collective agreements between employers and workers,<sup>159</sup> is to enable migrant workers to take leave on the occasion of the principal national or religious holidays of the home country.

#### Notes to Chapter IV

<sup>1</sup> France.

<sup>2</sup> See in this connection the preparatory work on the Migration for Employment Convention, 1939 (No. 66), Article 6 of which contains an identical formula, and in particular Report III, ILC, 25th Session, Geneva, 1939, p. 127.

<sup>3</sup> For example Australia, Norway.

<sup>4</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations, Part III: Discrimination in respect of employment and occupation; general conclusions on the reports relating to the Convention (No. 111) and the Recommendation (No. 111) concerning discrimination in respect of employment and occupation, 1958, ILC, 47th Session, Geneva, 1963, Report III: Report of the Committee of Experts on the Application of Conventions and Recommendations: General survey on the reports relating to the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, ILC, 56th Session, Geneva, 1971, Report III, Part 4B.

<sup>5</sup> Luxembourg.

<sup>6</sup> Sweden.

<sup>7</sup> Australia.

<sup>8</sup> For example Argentina (Constitution, article 20); Colombia (Constitution, article 11); Mexico (Constitution, article 33); Portugal (Constitution, article 15).

<sup>9</sup> For example Austria, Netherlands, Switzerland.

<sup>10</sup> Switzerland.

<sup>11</sup> Report V(2), ILC, 60th Session, Geneva, 1975, p. 19.

<sup>12</sup> Federal Republic of Germany.

<sup>13</sup> RCE, 1971 (Volume B), para. 27.

<sup>14</sup> See EP, ILC, 60th Session, Geneva, 1975, p. 646, para. 74.

<sup>15</sup> Switzerland.

16 Report V(2), ILC, 60th Session, Geneva, 1975, p. 18.

17 *ibid.*

18 RP, ILC, 60th Session, Geneva, 1975, p. 644, para. 53.

19 ILC, 63rd Session, Geneva, 1977, Report III, Part 4B: Report of the Committee of Experts on the Application of Conventions and Recommendations: General survey of the reports relating to the Equality of Treatment (Social Security) Convention, 1962 (No. 118).

20 France.

21 The text of Article 4, paragraph 2, of Convention No. 118 reads as follows:

Notwithstanding the provisions of paragraph 1 of this Article, the grant of the benefits referred to in paragraph 6(a) of Article 2 - other than medical care, sickness benefit, employment injury benefit and family benefit - may be made subject to the condition that the beneficiary has resided on the territory of the Member in virtue of the legislation of which the benefit is due, or, in the case of a survivor, that the deceased had resided there, for a period which shall not exceed -

- (a) six months immediately preceding the filing of claim, for grant of maternity benefit and unemployment benefit;
- (b) five consecutive years immediately preceding the filing of claim, for grant of invalidity benefit or immediately preceding death, for grant of survivors' benefit;
- (c) ten years after the age of 18, which may include five consecutive years immediately preceding the filing of claim, for grant of old-age benefit.

22 Netherlands (Act of 10 December 1964 respecting unemployment assistance).

23 Sweden.

24 France.

25 It should be noted that Article 6, paragraph 1(b)(i) of Convention No. 97 expressly mentions appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition. Furthermore, both Paragraph 34(1)(c)(ii) of Recommendation No. 151 and Article 7 of Convention No. 118 call for the conclusion of bilateral or multilateral agreements to protect these rights.

26 Netherlands, Norway.

27 United Kingdom.

28 RP, ILC, 60th Session, Geneva, 1975, p. 644, para. 55.

29 Report V(2), ILC, 60th Session, Geneva, 1975, p. 17.

30 This is the case, for example, in Sweden as regards local elections.

<sup>31</sup> In this connection see EP, ILC, 32nd Session, Geneva, 1949, Appendix XIII, p. 583.

<sup>32</sup> Article 20 of the Model Agreement reads as follows:

The competent authority of the territory of immigration shall ensure that migrants and the members of their families have hygienic and suitable housing, in so far as the necessary housing is available.

<sup>33</sup> For example Austria.

<sup>34</sup> See in this connection the preparatory work on the Migration for Employment Convention, 1939 (No. 66), Article 6, paragraph 1(c), of which contains a provision drafted in similar terms (EP, ILC, 25th Session, Geneva, 1939, Appendix VIII, p. 506).

<sup>35</sup> For example Philippines (section 270 of the Labour Code prohibits all forms of trade union activity by foreigners).

<sup>36</sup> For example Kuwait (foreigners may join a trade union only after five consecutive years of residence in the country) (Act of 1964 respecting work in the private sector, section 72); Syrian Arab Republic (Legislative Decree No. 84 of 1968 on trade union organisation; non-Arab aliens may join a trade union after one year's employment in the country, subject to reciprocity).

<sup>37</sup> For example Colombia (two-thirds of personnel, Labour Code, section 384); Panama (75 per cent of personnel, Labour Code, section 347).

<sup>38</sup> Brazil (Consolidation of Labour Laws, sections 515 and 537); Colombia (Labour Code, section 384); El Salvador (Labour Code, section 225); Guatemala (Constitution, article 114, paragraph 12); Haiti (Labour Code, section 276); Kuwait (Act of 1964, section 72, respecting work in the private sector; foreign workers may, however, delegate one of their number to represent them on the managing committee of the union); Lebanon (Labour Code, section 92; foreign workers may, however, delegate one of their number to represent them on the managing committee of the union); Malaysia (Trade Unions Ordinance, No. 23, 1959, as amended, section 28; exemptions may be granted at the discretion of the authorities); Mexico (Federal Labour Act, 1969, section 372); Niger (Labour Code, sections 6 and 25); Panama (Labour Code, section 369); Rwanda (Labour Code, section 8); Senegal (Labour Code, sections 7 and 25); Singapore (Trade Unions Act, section 31; exemptions may be granted at the discretion of the authorities); Syrian Arab Republic (Legislative Decree No. 84 of 1968, section 44; the officers of a trade union must be of Arab nationality); Tunisia (Labour Code, sections 251 and 252; exemptions may however be granted at the discretion of the authorities).

<sup>39</sup> Congo (at least five years' residence, Labour Code, section 187); France (Act No. 75-630 of 11 July 1975 to amend section L 411-4 of the Labour Code; foreigners who have worked in France for at least five years may now become officials or officers of trade unions. This Act has also abolished the nationality requirement for trade union delegates).

<sup>40</sup> Benin (Labour Code, section 9); Madagascar (Labour Code, section 7); Upper Volta (Labour Code, sections 6 and 24).

<sup>41</sup> For example Argentina (Law No. 22105 of 15 November 1979 concerning Workers Professional Associations, section 16); France (Labour Code, section L 411-4).

<sup>42</sup> For example Austria (Collective Labour Relations Act, 1973, section 3, subsection 1; Chambers of Labour Act, 1974, section 10, subsection 1); Luxembourg (the Government states, however, that a Bill will assimilate to nationals foreigners who are holders of a privileged work permit issued after five years of residence and employment).

<sup>43</sup> For example Belgium (as regards works councils and safety and health committees: Act of 17 February 1971 to amend the Act of 20 September 1948 to make provision for the organisation of the economic life of the country, and Act of 10 June 1952 respecting the health and safety of workers); France (Act No. 75-630 of 11 July 1975, which amended section L 412-12 of the Labour Code: foreign workers are now eligible for office as staff delegates and members of works committees on condition that they can "express themselves in French").

<sup>44</sup> For example Austria (Employment of Aliens Act, 1975, section 8, subsection 2); Panama (under section 213B of the Labour Code nationality is the second criterion, after seniority, for deciding on dismissals for financial reasons).

<sup>45</sup> For example India (Industrial Disputes Act, 1947, as amended, sections 25G and 25H).

<sup>46</sup> Syrian Arab Republic (the vocational training centres may however take on a specified percentage of nationals of other Arab countries).

<sup>46bis</sup> Finland.

<sup>47</sup> Austria (Employment of Aliens Act, 1975, section 4, subsection 2).

<sup>48</sup> United Kingdom.

<sup>49</sup> Austria (Code of Civil Procedure, sections 57ff, section 63).

<sup>50</sup> Spain (Order of 15 July 1976, section 2).

<sup>51</sup> Austria.

<sup>52</sup> This is, for example, the case in the following countries: Botswana (Employment of Visitors Act, 1968); Gabon (Ministerial Decree No. 00277/PR/MT of 31 May 1968); Philippines (Labour Code, sections 40 and 41).

<sup>53</sup> For example Belgium (Royal Order of 6 November 1967, as amended, section 12); Finland (Aliens Decree, No. 187/58 of 24 April 1978, section 32); Federal Republic of Germany (Work Permits Ordinance of 2 March 1971, as amended, section 1); Luxembourg (Grand-Ducal Regulations of 12 May 1972, as amended, section 2); Mauritius; Peru (pursuant to section 1 of Legislative Decree No. 22452 of 20 February 1979 and section 2 of Presidential Decree No. 06-79-TR of 15 May 1979, a foreign worker may not commence work until his contract of employment has been approved by the competent authority); Singapore (Regulations issued in application of the Employment Act, 1970, Article 9); Switzerland (Ordinance of 23 October 1978 to limit the number of foreign workers engaged in gainful activity, section 5).



54 For example Canada.

55 For example Belgium (Royal Order of 6 November 1967, as amended, section 12); France (Labour Code, section R.341-5 and R.341-6); Madagascar (Act No. 062/006 to regulate the organisation and control of immigration, section 9).

56 Luxembourg (Grand-Ducal Regulations of 12 May 1972, as amended, section 2).

57 For example, Switzerland (Ordinance of 23 October 1978 to limit the number of foreigners engaged in gainful activity, section 14; exemptions are, however, possible when the contract of employment has ended; this prohibition also applies to seasonal workers).

58 For example Belgium (Royal Order of 6 November 1967, as amended, section 16).

59 For example France, Federal Republic of Germany, Switzerland, United Kingdom.

60 For example Austria (Employment of Aliens Act, 1975, section 3); Belgium (Royal Order of 20 July 1967, section 4); Malaysia (Sarawak) (Employment Ordinance, 1952, section 119); Netherlands (Act respecting the employment of foreign workers, 1978, sections 4 and 5; this law has substituted a system of employment authorisations for that of work permits); Panama (Labour Code, section 17); Non-metropolitan territory: United Kingdom (Brunei).

61 For example Belgium (under section 4 of the Royal Order of 20 July 1967 mentioned above, an employment authorisation is not required when the worker holds a work permit of unlimited duration or a work permit for all the employers in the branch of activity to which the employer concerned belongs).

62 For example Austria (Employment of Aliens Act, 1975, section 4).

63 For example Netherlands (Act respecting the employment of foreign workers, 1978, section 7); Panama (Labour Code, section 17).

64 For example Australia, Canada.

65 For example Norway.

66 The right to free choice of employment is in principle acquired in the following countries after a period of employment or residence of the following duration: three years (Netherlands; Non-metropolitan territory: United Kingdom (Hong Kong)); three or four years (Belgium, depending on whether or not the worker is accompanied by his family); four years (France, United Kingdom); five years (Federal Republic of Germany, Luxembourg); eight years (Austria); ten years (Finland, Switzerland).

67 Austria, Finland, Switzerland.

68 For example Belgium (for foreigners who are nationals of countries with which Belgium has concluded a manpower agreement, restrictions on employment are lifted after two years of employment in the country when the worker is accompanied by his family, and after three years when he is alone in the country).

<sup>69</sup> This is the case, for example, with nationals of the member countries of the European Economic Community.

<sup>70</sup> Canada.

<sup>71</sup> For example Botswana, Ethiopia, Malawi, Mauritius, Saudi Arabia, Zambia. The situation seems to be the same in Tunisia. The governments of some of these countries state in their reports, however, that in principle only foreigners with special qualifications may be authorised to work in the country.

<sup>71bis</sup> For example, Spain, Italy.

<sup>72</sup> Kuwait (Act of 1964 respecting work in the private sector, section 10: the order of priority to be observed in recruitment is as follows: first, Kuwaiti workers; second, Arab workers who are registered or who have obtained a labour card; third, foreign workers who have obtained a labour card or a recruiting permit); Sudan (the Manpower Act, 1974, section 18, contains similar provisions).

<sup>73</sup> Kuwait (see note above); Mexico (Federal Labour Act, 1969, section 154); Sudan (see note above).

<sup>74</sup> United Kingdom (concerning foreigners coming under the Work Permit Scheme).

<sup>74bis</sup> Niger.

<sup>75</sup> Botswana; Singapore (Employment Act, No. 17 of 1968, section 109(2)).

<sup>76</sup> For example Colombia (Labour Code, section 74); El Salvador (Labour Code, section 7); Mexico (Federal Labour Act, 1969, sections 7 and 877); Norway (the quota is fixed by a collective bargaining unit); Panama (Labour Code, section 17: after ten years' residence foreigners are considered as nationals for the calculation of the quota); Peru (Legislative Decree No. 22452 of 20 February 1979, section 2); Saudi Arabia (Labour Code, section 45); Tunisia (Section 260 of the Labour Code provides that implementing regulations may in certain cases fix the maximum percentage of foreigners who may be employed).

<sup>77</sup> For example France, Federal Republic of Germany, Mauritius, Tanzania.

<sup>78</sup> Federal Republic of Germany (in principle, two years' residence for children and four years for spouses).

<sup>79</sup> This is, for example, the case in the following countries: Belgium, France, Federal Republic of Germany (as regards children of migrant workers), Switzerland, United Kingdom.

<sup>80</sup> In the Federal Republic of Germany the Ordinance of 29 August 1978 abolished the right to a special work permit enjoyed by the spouse of a foreign worker after five years of personal residence and five years of residence for the purpose of employment of the worker himself.

<sup>81</sup> Austria.

<sup>82</sup> For example France (Labour Code, R.341-5 and R.341-6); Federal Republic of Germany (Ordinance of 2 March 1971, as amended, section 1).

<sup>83</sup> For example Switzerland (Federal Act respecting the residence and settlement of aliens, 1931, section 8).

<sup>84</sup> Canada; Sweden (the Civil Service Act, No. 600, 1976, while reserving for nationals access to the armed forces and the police in particular, authorises the Government to exclude foreigners from access to diplomatic services, posts affecting international relations and posts implying a knowledge of questions which are important to the security of the State or which affect important economic interests).

<sup>85</sup> Norway; Sweden (see note above).

<sup>86</sup> Sudan (section 16 of the Manpower Act of 1964 authorises the employment of foreigners in public undertakings only subject to reciprocity).

<sup>87</sup> It is interesting to note that the Royal Commission on Australian Government Administration recommended that the requirement of Australian citizenship as a general condition for entry into the civil service should be abolished and should be retained only as a condition of qualification for certain special posts (for instance in the security and diplomatic services). It stressed that the fact that foreign workers occupied a considerable number of temporary or special posts in the civil service led to the conclusion that there was no valid reason for refusing them access to permanent posts. (Royal Commission on Australian Government Administration, para. 8.2.ii ff., Canberra, Australian Government Publishing Service, 1976).

<sup>88</sup> For example Australia, Austria, Canada.

<sup>89</sup> For example Austria (Federal Workers' Protection Act, section 6).

<sup>90</sup> For example Australia.

<sup>91</sup> For example Council of Europe; European Economic Community.

<sup>92</sup> The European Federation of Engineering Associations has established a register of higher technical professions, in which members of the engineering profession are classified according to the level of their training and qualifications. A document certifying the level of formation is issued to registered persons.

<sup>92bis</sup> For example, Norway, Syrian Arab Republic.

<sup>93</sup> See ECE, 1963, Part Three, paras. 77-80, *ibid.*, 1971 (Volume B), paras. 40, 41 and 44-50.

<sup>94</sup> New Zealand: Race Relations Act, 1971.

<sup>95</sup> Australia: Racial Discrimination Act, 1975.

<sup>96</sup> Australia.

<sup>97</sup> United Kingdom: section 3 of the Race Relations Act, 1976, which replaces the Race Relations Act, 1968, described in para. 41 of the General Survey of 1971.

<sup>98</sup> As in Argentina (Labour Code, 1976, section 17), and Hungary (Labour Code, 1967, section 18(3)).

<sup>99</sup> As in Bolivia (Labour Code, section 52), El Salvador (Labour Code, 1972, section 123), Mexico (Federal Labour Act, 1969, section 5-xi).

<sup>100</sup> El Salvador: Labour Code, section 124.

<sup>101</sup> Portugal (Legislative Decree No. 97/1977 on the employment of foreign workers, section 2(3)), Spain (Act No. 118/69 of 30 December 1969 guaranteeing equal rights with nationals in respect of labour relations, social security and employment protection to Latin American, Portuguese, Brazilian, Andorran and Filipino workers).

<sup>102</sup> Austria (Employment of Foreigners Act, 1975, section 8), Belgium (Royal Order of 6 November 1967 on the conditions for the grant and withdrawal of employment authorisations and work permits for foreign workers, sections 7 and 8).

<sup>103</sup> Switzerland: bilateral agreements with Italy of 10 August 1964 and Spain of 2 March 1961. Other bilateral agreements containing similar provisions include those of Belgium with Morocco and Turkey and of Luxembourg with Portugal and Yugoslavia.

<sup>104</sup> Austria: collective agreement of 17 December 1970 concerning the regulation of individual conditions of employment of foreign workers, between the Federal Chamber of Industry and the Austrian Federation of Trade Unions.

<sup>105</sup> France: section 416 of the Penal Code, introduced by Act No. 75-625 of 11 July 1975, section 11.

<sup>106</sup> Loc. cit., para. 49.

<sup>107</sup> New Zealand: Race Relations Act, 1971, sections 10-22.

<sup>108</sup> Australia: Racial Discrimination Act, 1975, sections 19-25 establishing a commissioner for community relations and defining his functions.

<sup>109</sup> United Kingdom: Race Relations Act, 1976.

<sup>110</sup> Racial Discrimination: A guide to the Race Relations Act, 1976, prepared by the Home Office and Central Office of Information (Her Majesty's Stationery Office, 1977), p. 33.

<sup>111</sup> Federal Republic of Germany.

<sup>112</sup> Austria (Foreigners' Committee attached to the Ministry of Social Administration), Belgium (Consultative Council for Immigration), Canada (Canada Employment and Immigration Advisory Council), Luxembourg (National Immigration Council).

<sup>113</sup> Luxembourg: Act of 24 July 1972 concerning social action on behalf of immigrants, sections 2, 3, and 5.

<sup>114</sup> Canada: Canada Employment and Immigration Department and Commission Act, 1976-77, ch. 54.

<sup>115</sup> Agreement of 25 February 1975 between the Norwegian Federation of Trade Unions and the Norwegian Employers' Confederation.

<sup>116</sup> The Netherlands Government, for example, indicates that such provisions were contained in 26 collective agreements concluded in 1979.

- 117 ILC, 59th (1974) Session, Report VII(1), p. 26.
- 118 Czechoslovakia: agreement between the Central Trade Union Council and the Polish central trade union.
- 119 Austria.
- 120 Federal Republic of Germany: Act on the Organisation of Undertakings, section 80, para. 1.
- 121 United Kingdom.
- 122 Australia (New South Wales).
- 123 See RCE, 1963, Part Three, paras. 82-85. ibid., 1971 (Volume B), ch. V.
- 124 Australia: Racial Discrimination Act, 1975, section 28.
- 125 As in Australia and Norway.
- 126 As in Australia, Luxembourg, the Netherlands, Norway.
- 127 Australia.
- 128 Sweden.
- 129 United Kingdom.
- 130 Norway.
- 131 France: Circular No. 944 of 21 May 1975 of the Ministry of Labour.
- 132 France, Federal Republic of Germany, the Netherlands, Sweden, Switzerland.
- 133 Federal Republic of Germany.
- 134 Belgium, Canada, the Netherlands.
- 135 France: Circular No. 944 of 21 May 1975 of the Ministry of Labour concerning the continuing vocational training policy for foreign workers.
- 136 Austria.
- 137 Norway.
- 138 France: Circular No. 03-128 of 25 March 1977 on the access of foreigners to the assistance of the placing services.
- 139 Australia (South Australia), Austria; Non-metropolitan territory: United Kingdom (Hong Kong).
- 140 Austria.
- 141 Federal Republic of Germany.
- 142 Australia.

143 Reference has been made in governments' reports to bilateral agreements between Australia and Turkey, Austria and Turkey, Austria and Yugoslavia, France and six countries of emigration. A bilateral agreement between Luxembourg and Portugal also makes provision for the promotion of the teaching of Portuguese to the children of Portuguese workers.

144 Australia (in addition to the bilateral arrangements with Turkey), the Netherlands, Norway, Sweden, Switzerland (in certain cantons).

145 Norway, Sweden.

146 Non-metropolitan territory: United Kingdom (Hong Kong).

147 Australia.

148 Belgium (under the bilateral agreement with Italy of 11 July 1966), Switzerland (some cantons).

149 Australia.

150 Australia, Norway, Sweden.

151 Norway.

152 Sweden.

153 Norway.

154 Austria.

155 As in Norway and Sweden.

156 As in Australia (Victoria).

157 As in Austria.

158 As in the agreements between Belgium and Algeria, Morocco, Tunisia and Yugoslavia respectively, and Luxembourg and Yugoslavia.

159 As in the Netherlands.

## CHAPTER V

### SOCIAL POLICY

413. The basic principle of social policy in respect of migrant workers, as spelled out in the relevant instruments, is the promotion of equality of opportunity and treatment with nationals. Many aspects of social policy accordingly fall within the broad framework of a policy designed to promote and guarantee equal opportunity and equal treatment, and these have been considered in the preceding chapter. The measures described there include action to promote the adaptation of migrant workers and their families to the society of the country of employment and steps to assist and encourage them to preserve their national and ethnic identity and their cultural ties with their country of origin. These two forms of action bring out the dual objectives of social policy for immigrants within the broad framework of equality of opportunity and treatment with nationals: integration (as opposed to assimilation) into the host society and preservation of national identity.

414. Member States place differing emphases on these two objectives, the importance of which of course varies according to whether the country of immigration is one which gives the immediate right of permanent settlement and free choice of employment or one in which migrant workers are subject to restrictions for a number of years and have to satisfy certain requirements before they may be granted the right to remain permanently, so that there is generally a considerable proportion of the migrant workforce which eventually returns to the home country. Even in the latter case, as has been pointed out by one country<sup>1</sup> the preservation of cultural identity not only contributes to facilitating the ultimate return to the country of origin, but makes for a more positive integration into the host country and enriches the contacts between the two countries.

415. The opportunities for cultural enrichment of the country of immigration through contacts with immigrant communities have been recognised by certain countries, one of which,<sup>2</sup> for example, has adopted the following principle in relation to the cultural rights of migrants:

Policies governing entry and settlement should be based on the premise that immigrants should integrate into society. Migrants will be given every opportunity, consistent with this premise, to preserve and disseminate their ethnic heritage.

In making available such opportunities to migrants the government has emphasised that the objective is the development of a national multi-

cultural society, and emphasis is placed on multi-cultural education and ethnic broadcasting designed not only to assist national groups to maintain their cultures but also to assist the population as a whole to appreciate those cultures.

416. Other countries place the emphasis on the integration of migrant workers and their families who remain in the country on a long-term basis. In one country,<sup>3</sup> for example, some evidence of willingness to integrate is a precondition of the grant of an unlimited residence permit or of the right of residence, which will only be accorded, inter alia, if the migrant worker has acquired some knowledge of the language of the country of immigration, if his children are attending school in accordance with the provisions on compulsory education and if he has accommodation which meets local standards. The government has developed a series of measures for the integration of long-term migrant workers and their families, with particular emphasis on the children and young persons growing up in the country, the objectives being to enable them to take full advantage of the educational facilities offered and to promote their occupational integration in due course. Over-all responsibility for co-ordinating and promoting integration measures has been entrusted to a government delegate for the integration of migrant workers and their families, who is also responsible for strengthening and developing contacts with the governments of the countries of origin.

417. An example of a rather different approach is provided by one country<sup>4</sup> which, in providing a description of the general principles underlying its policy with respect to immigrants, has laid stress on the need to allow them to retain their cultural identity to the extent that they wish to do so. Its policy is summed up in three objectives, namely equality which means that immigrants must have the same rights and obligations as nationals, and that the community should take steps to give them a genuine opportunity to retain their own languages, to engage in cultural activities of their own and to keep in touch with their countries of origin; freedom of choice which implies that members of linguistic minorities must be given the opportunity to decide for themselves the extent to which they are to retain and develop their original cultural and linguistic identity; and partnership which means that co-operation between immigrant and minority groups and, on the other hand, the majority population should be broadened, that active efforts should be made to achieve greater solidarity and tolerance and that measures must be taken to facilitate the participation of these groups in trade union activities and politics for example.

418. The foregoing examples are cited as illustrations of national social policies with respect to migrant workers and their families. Such policies are called for by Paragraph 1 of Recommendation No. 151, which provides that States should apply the provisions of the Recommendation within the framework of a coherent policy on international migration for employment which should take account, inter alia, of the long-term social and economic consequences of migration for migrants as well as for the communities concerned. Most governments however have not provided a statement of the general principles of their social policy but have confined themselves to the specific aspects of social policy dealt with in the instruments. As has already been stated, these are in part dealt with in earlier chapters of this survey, and the rest of this chapter will be limited to those specific aspects of social policy which are covered in greater detail in Part II of Recommendation No. 151, namely, reunification of families, protection of the health of migrant workers and social services.



### 1. Reunification of families

419. Neither of the two Conventions imposes any obligation on ratifying States to permit the families of migrant workers to join them. Article 13 of Convention No. 143 states merely that "A Member may take all necessary measures ... to facilitate the reunification of the families of all migrant workers legally residing in its territory".

420. The relevant provisions of Recommendation No. 86 (Paragraph 15) are limited to migrants for employment introduced on a permanent basis and define the family of a migrant as including only his wife and minor children. They have been supplemented by the more detailed provisions of Recommendation No. 151 (Paragraphs 13-19), which like Article 13 of Convention No. 143 apply to migrant workers generally, and define the family to include the spouse, dependent children, father and mother.

421. The law and practice of those countries which have provided information on this aspect of the instruments generally permit the spouse and unmarried minor children to accompany a migrant worker or join him after a given period. The children so authorised are more usually defined by reference to a specified age, usually the age of majority, rather than to their dependent status,<sup>5</sup> although one country<sup>6</sup> refers to "unmarried children forming part of the migrant worker's household", and another<sup>7</sup> states that the principles of family reunification as set out in Recommendation No. 151 is generally respected.

422. In many cases, of course, children who have reached the age of majority will no longer be dependent on their parents, but problems may well arise for handicapped children after majority and for young persons continuing their studies beyond the age of majority, or unable to find employment in the home country because of lack of opportunities. The reference in the instruments of 1975 to "dependent" rather than "minor" children would seem to indicate that it is the actual situation of the child in relation to his parents, and not his legal status, which should be taken into consideration in deciding whether to admit him under the heading of family reunification.

423. The extension of the definition of the family to include the migrant worker's father and mother may cause problems for governments which limit family reunification to the spouse and qualified children.<sup>8</sup> Other countries permit the parents of migrant workers to join them in certain cases: where the worker has been admitted on an indefinite basis or for permanent settlement, either immediately<sup>9</sup> or after an initial period of residence by the migrant worker,<sup>10</sup> or where a single aged parent has no close family left in the home country.<sup>11</sup> Only one government<sup>12</sup> states that parents are admitted on the same basis as the spouse and minor children; another<sup>13</sup> states that the aged parents as well as the wife and dependent children are generally considered favourably for entry.

424. Paragraph 13(1) of Recommendation No. 151 provides that "All possible measures should be taken both by countries of employment and by countries of origin to facilitate the reunification of families of migrant workers as rapidly as possible. These measures should include, as necessary, national laws or regulations and bilateral and multilateral arrangements".

425. Only a limited number of measures designed to facilitate family reunification have been mentioned in governments' reports. Some

countries<sup>14</sup> have stated in general terms that the immigration authorities are responsible for facilitating the entry of migrant workers' families. Others have referred to financial assistance with the transport costs of the family members. In some countries,<sup>15</sup> these are the responsibility of the employer; in one,<sup>16</sup> they are reimbursed in whole or in part by the State, and in another<sup>17</sup> the migrant worker may be eligible for a loan to cover them. However, sufficient information is not available to make possible an assessment of the extent to which countries of immigration follow a policy of systematically facilitating the reunification of migrant workers' families.

426. The information available concerns rather the conditions which must be met before a migrant worker's family will be admitted to the country of employment. In some cases, the migrant worker must have been resident in the country for a specified period, usually one year,<sup>18</sup> before his family can join him. Certain governments<sup>19</sup> require that the family members be free from infectious diseases, or in good health. The migrant worker may be required to show that he has sufficient resources to maintain his family,<sup>20</sup> or that adequate housing is available for them.<sup>21</sup>

427. This last requirement reflects the provision in Paragraph 13(2) of the Recommendation that "A prerequisite for the reunification of families should be that the worker has, for his family, appropriate accommodation which meets the standards normally applicable to nationals of the country of employment". Since the lack of adequate housing may thus constitute an obstacle to family reunification, Paragraph 16 provides that States should take full account of the needs of migrant workers and their families, in particular, in their policy regarding, *inter alia*, the construction of family housing and assistance in obtaining this housing.

428. Governments which have provided information on their policy in relation to migrant workers' access to family housing have, in general, limited themselves to indicating that migrant workers are treated on the same basis as nationals.<sup>22</sup> Some governments<sup>23</sup> recognise that this formal equality may mean that migrant workers face difficulties in obtaining family housing in practice in so far as they are not familiar with conditions and procedures in the host country. In such circumstances, what the Recommendation would seem to call for is that, while ensuring equality of treatment between nationals and migrant workers in access to family housing, account be taken of the needs of migrant workers' families in planning the construction and allocation of housing so that these needs can be met as well as those of nationals, and that migrant workers be given appropriate assistance in obtaining family housing, for example through the reception services which are referred to, together with housing, in Paragraph 16 of Recommendation No. 151, or through the social services referred to in Paragraph 24.

429. Only one government<sup>24</sup> has furnished specific particulars of a positive policy to provide immigrant workers with suitable accommodation. The special measures taken by this government include grants to local authorities for housing for immigrants and the establishment of a government-financed society for immigrant housing to acquire and make available housing for immigrants. The dwellings are transferred to the occupiers through housing co-operatives, with the assistance of loans from the State Housing Bank. Another government<sup>25</sup> refers in general terms to specific measures for the housing of immigrants, taken in conjunction with action to rehouse persons living

in unfit premises, a large proportion of whom are immigrants; the measures in question include the issue of regulations and financial assistance through specialised agencies. Measures of this kind undoubtedly make a positive contribution to the reunification of families, and are accordingly desirable in so far as it is possible to integrate them into or co-ordinate them with national housing policy for the population as a whole.

430. One of the methods of facilitating the reunification of families referred to in Recommendation No. 151 is the conclusion of bilateral arrangements. Many of the available bilateral agreements<sup>26</sup> make provision, in accordance with this principle of the Recommendation, for workers migrating under their terms to be accompanied or joined by their families. These agreements usually cover the spouse and minor dependent children, but in some cases they provide that authorisation may be given on request for dependent parents or other relations to join the migrant worker. Although in some cases they appear to contemplate the family accompanying the migrant worker, they more generally provide for members of the family to join him after a specified period which varies from one month to two years, and once he has found suitable housing for them. Other clauses designed to facilitate family reunification found in such agreements include the stipulation that the government and employers of the country of immigration will help migrant workers to find suitable family accommodation or, in one case,<sup>27</sup> that the employer will provide such accommodation. One agreement<sup>28</sup> provides that the government of the country of immigration will reimburse the travel costs of family members of migrant workers with at least three dependent children.

431. Certain governments have indicated that their family reunification policy does not extend to seasonal workers<sup>29</sup> or workers admitted to do manual work for a predetermined period on a designated project.<sup>30</sup> Clearly, the admission of the families of migrant workers who are to be in the country only for a limited period of time may cause practical problems of accommodation, schooling, adaptation, etc., and it would not seem that it is necessarily called for by the Recommendation, which speaks of "all possible measures" to facilitate family reunification; it may well be considered that it is not possible to take measures to facilitate the short-term stay of the families of seasonal migrant workers. Moreover, the provisions concerning social policy generally appear to be based on the premise of a long-term stay; similarly, those concerning the reunification of families, which contemplate the family joining the migrant worker after he has entered the country and found appropriate accommodation, would seem to lead to the conclusion that they were not drawn up with a stay of only a few months in mind. It may be considered as desirable that a seasonal or short-term migrant worker should be allowed to bring his family with him where he is able himself or through his employer to make arrangements for their accommodation and to maintain them, but it would not seem that the Recommendation calls on States to take positive measures to facilitate such short-term stays.

432. Paragraphs 17 and 18 of Recommendation No. 151 provide for the case in which a migrant worker cannot be joined by his family in his country of employment. They envisage that he should be entitled either to visit his family during his paid annual holiday without losing any acquired rights or rights in course of acquisition and without having his employment or right of residence terminated, or to be visited by his family for a period corresponding at least to his annual leave; and that the possibility should be considered of giving financial assistance towards the travel costs involved, or a reduction in the normal cost of transport.

433. These provisions give rise to a problem referred to by two governments, which indicate that they cannot prevent the worker's employment being terminated by the employer, either generally<sup>31</sup> or on certain limited grounds,<sup>32</sup> during his absence from the country on leave. The latter government adds that the migrant worker will have the same rights as nationals and that his work permit will not be withdrawn. It would seem that the purpose of this provision is principally to prevent the worker's employment being terminated because of his absence from the country on his annual leave, and in particular action which would prevent him from returning to the country of employment and resuming his status there as though he had not been away. It does not necessarily require that he be given greater protection against dismissal than is accorded to nationals, so long as he is able to return and is placed on his return in the same situation as he would have been if his employment had been validly terminated while he was in the country.

434. None of the reporting governments has indicated that financial assistance is given from public funds towards the cost of travel for purposes of family reunification during the worker's annual leave. Some countries<sup>33</sup> have indicated that the employment contract may provide for these travel costs to be paid in whole or in part by the employer.

## 2. Protection of the health of migrant workers

435. Measures for the protection of migrant workers' health at the time of recruitment, travel and arrival in the country of employment, which are covered by Article 5 of Convention No. 97, have been considered in Chapter II above, and equality of access with nationals to health care facilities is covered by Chapter IV. The supplementary provisions of Recommendation No. 151 are limited in scope, covering first the prevention of special health risks to which migrant workers may be exposed and secondly measures to protect migrant workers against occupational hazards.

436. The types of special health risk to which migrant workers may be exposed were identified in the preparatory work<sup>34</sup> as threefold: conditions already suffered from in the country of origin (especially forms of parasitosis), disorders contracted in the country of employment where the migrant worker may have inadequate immunity to certain diseases, and physical and psychological disorders peculiar to the process of adaptation to a new environment (particularly digestive disorders and neuroses).

437. The few governments who have touched on the question in their reports have either referred to the medical examination carried out at the time of migration<sup>35</sup> or indicated that the health protection measures for migrant workers are the same as those for nationals.<sup>36</sup> While a medical examination at the time of migration should make it possible to identify conditions from which the worker may be suffering before he leaves the home country, it will not necessarily ensure that he receives appropriate treatment in the country of employment. Similarly, the availability of national medical facilities to migrant workers on an equal basis with nationals may not in itself suffice to identify and treat the special health risks to which migrant workers are exposed. As is pointed out in the preparatory work,<sup>37</sup> the migrant worker may have problems in obtaining information and expressing

himself, he may be reluctant for financial reasons to consult a doctor and he may not know how to avail himself of hospital facilities. It seems important, if problems of this kind are to be overcome, not only that medical care should be available to migrant workers on the same basis as to nationals, but also that social services of the type envisaged by Paragraph 24 of Recommendation No. 151, and considered below, should be available to assist them in obtaining the health protection which they need, and that medical personnel qualified to deal with the particular health problems of migrant workers should be available in areas with an immigrant population. An interesting initiative to this end has been taken in one country<sup>38</sup> in which an Instruction Centre for Health Care for Foreigners has been set up not only to give instruction to foreigners on health care provisions but also to provide information and instruction to general practitioners and other workers in the public health field.

438. Paragraphs 21 and 22 of Recommendation No. 151 provide for training and instruction of migrant workers in occupational safety and occupation hygiene in connection with their practical training or other work preparation, for information to be given to migrant workers, after beginning employment, on provisions concerning the protection of workers and prevention of accidents and safety regulations and procedures, and for measures to be taken by employers to ensure that migrant workers fully understand instructions, warnings, symbols and other signs relating to safety and health hazards at work.

439. One country<sup>39</sup> has referred in this regard to the obligation imposed on employers by its legislation to ensure, as far as is reasonably practical, the safety, health and welfare of all employees, while recognising that to some extent this means taking account of special circumstances that may put the migrant worker at greater risk than his colleagues, such as communications difficulties. This type of problem is reflected in Paragraph 22(2) of the Recommendation which states that "Where, on account of the migrant workers' lack of familiarity with processes, language difficulties or other reasons, training or instruction given to other workers is inadequate for them, special measures which ensure their full understanding should be taken." Special measures of the type envisaged are described in the report of one government<sup>40</sup> which refers to courses and seminars on occupational safety and hygiene provisions organised by the trade unions for foreign workers; employing undertakings pay an indemnity to workers attending such courses. Other countries<sup>41</sup> have referred only in general terms to information and instructions on safety precautions given to migrant workers, if necessary with the assistance of an interpreter, as they are integrated into the work of the undertakings, and to the obligations imposed on the employer to give such instructions.

440. It is not possible to form an assessment, on the basis of the information provided, of the extent to which measures are taken, in accordance with Paragraphs 21 and 22 of the Recommendation, to counteract the special problems of migrant workers which, according to the preparatory work,<sup>42</sup> mean that they are at a substantially greater risk of suffering an industrial accident than nationals. In order to overcome these problems, it is essential not only to ensure adequate training in safety and health but also to make employers aware of the need to ensure that migrant workers fully understand all safety and health instructions and precautions, and of the fact that it may be necessary for them to take special measures for this purpose, since the instructions and training given to other workers may be inadequate for migrant workers.

### 3. Social services

441. Paragraph 23 of Recommendation No. 151, which provides that migrant workers and their families should have access to social services under the same conditions as nationals of the countries of employment, seems to be generally respected in countries of immigration. However, one federal country<sup>43</sup> indicates that the principle of equal access is not respected in some of its constituent units in which the access of non-nationals to certain social services is dependent on international agreements and effective reciprocity in the country of nationality.

442. Moreover, equality of access may not be sufficient to ensure that migrant workers benefit equally with nationals from the activities of social services, and it is with a view to overcoming the handicaps which may prevent immigrants from taking advantage of the social services available that Paragraph 24 of the Recommendation provides that, in addition, social services should be provided to perform certain specific functions in relation to migrant workers and their families.

443. One of the functions of such social services is to assist migrant workers in adapting to the country of employment, in obtaining information and advice from appropriate bodies, in complying with administrative and other formalities, and in making full use of services and facilities provided in the social field (Paragraph 24(a) and (b)). Assistance of this kind is particularly needed on arrival and during the period of settling in to the host country, and the types of assistance provided and means through which it is given in connection with the reception of migrants have been described in Chapter II above (see in particular paragraphs 57 to 61 and 116 to 128). The services and facilities described there generally remain available to migrant workers and their families throughout the period of residence, and are qualified to assist them in the various respects covered by Paragraph 24(a) and (b) of Recommendation No. 151. Reference is therefore made to the information given in Chapter II as regards the kinds of assistance given to migrant workers and their families in these respects.

444. Paragraph 25 of the Recommendation specifies that the social services in question may be provided by public authorities, by approved non-profit-making organisations or bodies or by a combination of both. It appears from governments' reports that a great variety of methods are used in ensuring that appropriate social services are available to immigrants.

445. One country,<sup>44</sup> for example, has established an immigration service responsible for social measures for the benefit of migrant workers, which has the tasks both of providing information and assistance to immigrants and of promoting and co-ordinating the activities of other social services, public and private, in relation to immigrants. While a single centralised service of this kind may be appropriate for a small country, or one in which immigrant workers are concentrated in a limited area, it is more likely to be necessary to provide services over a wide geographical area. Thus one government<sup>45</sup> has indicated that it has established 570 offices, with some 700 social counsellors, to provide social counselling and assistance to migrant workers and their families. Other governments<sup>46</sup> have referred to social services provided by the regional or local authorities, in particular in the capital city,<sup>47</sup> or by regional foundations with

central government subsidies,<sup>48</sup> and yet others<sup>49</sup> have indicated that facilities are provided at the different levels of government - central, regional and local.

446. One federal State,<sup>50</sup> which undertook a comprehensive review of post-arrival programmes and services to migrants in 1977-78, has referred to a complex series of arrangements, both at the federal and at the state levels, for providing social services to immigrants. For example, the Federal Department of Immigration and Ethnic Affairs provides regional advisory services and several of the constituent units<sup>51</sup> have established state-level bodies responsible for ensuring that the social needs of immigrants are met.

447. In several countries,<sup>52</sup> voluntary non-profit-making organisations or bodies play an important role in providing assistance and guidance to immigrant workers and their families, usually as a supplement to public services and often with government financial support.

448. As has been emphasised by one government,<sup>53</sup> in many cases the role of these special social services for immigrants is essentially to provide them with the information and assistance necessary to enable them to take advantage of the services generally available to residents in the country of employment. In some countries, the special measures to assist migrants are integrated into the general social service institutions of the country rather than being provided separately, by equipping these institutions to understand and meet the particular needs of migrants. Paragraph 24(e) of Recommendation No. 151 advocates this form of solution by providing that full use should be made of services which are or can be provided by authorities, organisations and bodies serving the nationals of the country of employment, including employers' and workers' organisations.

449. Measures to equip such organisations and bodies for this role are also provided for by Recommendation No. 151, which mentions a variety of means of helping social service institutions and bodies catering for the population generally to meet the particular needs of migrants. They include assistance in identifying these needs and adapting to them, the provision of information and advice regarding the formulation, implementation and evaluation of social policy with respect to migrant workers (Paragraph 24(c) and (d)), ensuring that sufficient resources and adequately trained staff are available (Paragraph 26), and co-operation and co-ordination between different social services within the country and, as appropriate, with corresponding services in other countries (Paragraph 27).

450. In some countries<sup>54</sup> a central government body has been set up to provide advice and information to government departments and agencies and other organisations dealing with immigrants, as well as to co-ordinate the action of the various bodies and services concerned. An alternative or supplementary approach is to appoint, in each government department or agency concerned, a senior official responsible for migrants' questions, or to establish a specialised unit responsible for ensuring that migrants' needs are adequately catered for at the various levels.<sup>55</sup> In addition, specially qualified officials, and where necessary interpreters, may be appointed to the offices of social service agencies which have to deal with migrant workers' problems,<sup>56</sup> and special courses are held for officials from these offices, to provide training in dealing with the problems they will be called on to face.<sup>57</sup>

451. Responsibility for co-ordinating the activities of the different social services and ensuring co-operation between them is in certain countries<sup>58</sup> entrusted to a national committee grouping representatives of the different agencies concerned. One country<sup>59</sup> has referred to its Immigration Settlement and Adaptation Program, under which agencies throughout the country are entrusted, under contracts, with the provision of services to immigrants, and another<sup>60</sup> has issued an information kit covering national policies and programmes for the settlement of new immigrants, to assist all those concerned in their implementation; it is supplemented by weekly bulletins updating the information provided.

#### 4. Consultation of employers' and workers' organisations

452. Recommendation No. 151 provides in Paragraph 9 that social policy should be formulated and applied in consultation with representative organisations of employers and workers, and Paragraphs 14 and 29 provide for consultation of representatives of all concerned, and in particular, of employers and workers, on measures for the reunification of families and on the organisation of social services.

453. Very little information has been provided on consultations for these purposes, and in general they are limited to an indication that employers and workers are represented on a national committee with responsibilities in respect of migrant workers,<sup>61</sup> or to a statement in general terms that such consultations take place.<sup>62</sup> Two countries<sup>63</sup> however have indicated that the trade unions play a direct role in ensuring that the necessary social services are provided for foreign workers, and in another<sup>64</sup> the employers' and workers' organisations are among the bodies who jointly set up a foundation for the reception and orientation of migrants in the national capital.

454. It is not possible, in view of the limited information available, to form any assessment of the extent to which employers' and workers' organisations are associated in the formulation and implementation of social policy measures for the benefit of migrant workers.

#### Notes to Chapter V

<sup>1</sup> Switzerland.

<sup>2</sup> Australia.

<sup>3</sup> Federal Republic of Germany.

<sup>4</sup> Sweden.

<sup>5</sup> Australia (21), Austria (20), Canada (21), France (18), Federal Republic of Germany (age of majority), Norway (20), Switzerland (age of majority), United Kingdom (18 in the case of workers subject to the work permit scheme, 21 in the case of workers no longer subject to the scheme and EEC nationals).

<sup>6</sup> Belgium.



7 Luxembourg.

8 For example, Switzerland has indicated that it is unable to apply these provisions of Recommendation No. 151 for this reason.

9 Canada, United Kingdom.

10 Australia.

11 France.

12 Austria.

13 Non-metropolitan territory: United Kingdom (Hong Kong).

14 France (National Immigration Office); Non-metropolitan territory: United Kingdom (Hong Kong) (Immigration Department).

15 Benin, Congo, Mali, Rwanda, Senegal; Non-metropolitan territory: United Kingdom (Hong Kong).

16 Belgium.

17 Canada.

18 France, Federal Republic of Germany, Netherlands. In Switzerland the migrant worker's residence must be stable and lasting, terms which are currently interpreted as satisfied after 15 months' residence, a period which it is proposed to reduce to 12 months.

19 Austria, Canada, France.

20 Canada, France, United Kingdom.

21 Austria, France, Netherlands, Norway, Switzerland.

22 Austria, France, Netherlands; Non-metropolitan territory: United Kingdom (Hong Kong). The situation seems to be similar in Singapore where the Government indicates that foreign workers now have the right to rent publicly built flats which were formerly not available to them.

23 France, Netherlands.

24 Norway.

25 France.

26 Agreements between Belgium and Spain of 28 November 1956, Belgium and Greece concerning coalminers of 12 July 1957, Belgium and Morocco of 17 February 1964, Belgium and Turkey of 16 July 1964, Belgium and Italy of 11 July 1966, Belgium and Tunisia of 7 August 1969, Belgium and Algeria of 8 January 1970, Belgium and Yugoslavia of 23 July 1970, United Republic of Cameroon and Gabon of 9 August 1974, France and Morocco of 1 June 1963, France and United Republic of Cameroon of 26 June 1976, France and Portugal of 11 January 1977, Luxembourg and Portugal of 20 May 1970, Netherlands and Morocco of 14 May 1969, Switzerland and Italy of 10 August 1964.

27 Co-operation Agreement on Manpower between United Republic of Cameroon and Gabon of 9 August 1974, Article 11.

6. 28 Agreement between Belgium and Italy of 11 July 1966, Article

29 Switzerland.

30 Non-metropolitan territory: United Kingdom (Hong Kong).

31 Canada.

32 Norway (cessation or curtailment of the employer's activities).

33 Czechoslovakia; Non-metropolitan territory: United Kingdom (Hong Kong).

34 ILC, 59th (1974) Session, Report VII(1), p. 33.

35 Austria, Luxembourg.

36 Austria, Belgium, Mali.

37 ILC, 59th (1974) Session, Report VII(1), p. 33.

38 Netherlands.

39 United Kingdom: Health and Safety at Work Act, 1974.

40 Czechoslovakia.

41 Austria, Luxembourg, Netherlands.

42 ILC, 59th (1974) Session, Report VII(1), pp. 33-34.

43 Austria.

44 Luxembourg: Act of 24 July 1972 concerning social action for immigrants.

45 Federal Republic of Germany. On the comparable national network of offices in France, see paragraph 57 above. Similarly Sweden has a network of 85 immigrants' bureaux.

46 Belgium.

47 Austria, Norway.

48 Netherlands.

49 Canada, Norway.

50 Australia.

51 New South Wales has established an Ethnic Affairs Commission, Victoria's Community Services Centre includes a Migrant Advisory Bureau, and Queensland has a State Migration Office.

52 Australia, Austria, Canada, France, Luxembourg, Norway, Switzerland; Non-metropolitan territory: United Kingdom (Hong Kong).

53 France.

54 Australia (Ethnic Affairs Branch of the Premier's Department in South Australia; Ministry of Immigration and Ethnic Affairs in Victoria), Canada (Employment and Immigration Commission), France (Secretary of State responsible for immigrants), Federal Republic of Germany (federal government delegate for the integration of foreign workers and their families), Norway (Immigration Secretariat of the Ministry of Local Government and Labour). In Austria a similar service is provided for the administrative services of Vienna by the Foreigners' Section of the City's Personnel Office.

55 As in Australia (ethnic liaison officer and migrant services unit in the Federal Department of Social Security; ethnic liaison officer in each government department and agency in South Australia). Norway (immigrant adviser in the Ministry of Health and Social Affairs).

56 Austria (interpreter in employment offices and housing authorities), Federal Republic of Germany (special counsellors in social institutions), Netherlands (special facilities in social service institutions on an experimental basis).

57 Australia, Federal Republic of Germany, Norway.

58 Australia (Globally implementation task force set up to implement the recommendations of a Review of Post Arrival Programs and Services to Migrants, one of whose tasks is to develop machinery for co-ordination and continuing consultation), Federal Republic of Germany (Co-ordinating Committee for Foreign Workers), Norway (Council for Immigrant Affairs), Sweden (National Immigration and Naturalisation Board); Non-metropolitan territory: United Kingdom (Hong Kong) (Council of Social Services).

59 Canada.

60 Australia.

61 Austria (Foreigners' Committee of the Ministry for Social Administration), Federal Republic of Germany (Co-ordinating Committee for Foreign Workers), Luxembourg (Management Committee of the Immigration Service), Norway (Council for Immigrant Affairs), Sweden (advisory body chaired by the minister responsible for immigrant affairs).

62 Canada.

63 Czechoslovakia, German Democratic Republic.

64 Austria: Foundation for the reception and orientation of persons migrating to Vienna.

## CHAPTER VI

# EMPLOYMENT, RESIDENCE AND DEPARTURE

455. The migrant workers' instruments contain a number of provisions concerning the extent to which a migrant worker should be allowed to continue to reside in the country of immigration outside the periods of actual employment, and concerning his rights on leaving the country of employment.

### 1. Continued residence in case of incapacity for work

456. Convention No. 97 provides, in Article 8, that migrant workers and their families admitted on a permanent basis shall not be returned to the country of emigration because the migrant is unable to follow his occupation by reason of illness or injury subsequent to entry; countries which admit migrants on a permanent basis on arrival may limit this right during the first five years of residence.

457. In general, this provision has not given rise to problems in ratifying States. There are however two types of circumstances in which the Committee has been concerned to ensure that the national legislation is not applied in a manner inconsistent with the Convention. The first is the case of legislation which gives the government broad powers to expel foreigners with no express limitation of the kind required by this Article.<sup>1</sup> The second is the case of legislation which authorises the expulsion of foreigners in cases of danger to public health. In one case of this kind,<sup>2</sup> the Committee accepted the Government's explanation that expulsion cannot be ordered on the grounds of the sickness itself or the incapacity for work, but only in cases in which a foreign worker suffering from an infectious disease refuses to be treated by a doctor or to respect the quarantine regulations, thus constituting a public health hazard. In another case<sup>3</sup> in which an immigrant can be removed from the country when receiving in-patient treatment for mental illness "when it is in the interests of the patient to remove him" the Committee accepted the Government's explanation that removal is ordered only when the competent authority is satisfied that it is in the patient's interest, for example because he or his relatives in the home country wish it and proper arrangements have been made for his care and treatment.

458. The provision also appears to be largely applied in States which have not ratified the Convention and which admit migrant workers

on a permanent basis either immediately on entry<sup>4</sup> or after an initial period of residence and employment.<sup>5</sup> One country<sup>6</sup> indicates that it will not be able to apply Article 8 even after the adoption of draft legislation on foreigners which is currently being prepared, because it will still be possible to expel a foreigner with less than ten year's residence on the grounds that he or a dependant of his has become a continuing and substantial burden on public assistance whereas, according to the government, Article 8, paragraph 2, authorises such expulsions only during the first five years. In this connection, it should be pointed out that the Convention only prohibits such expulsions in the case of persons accorded the status of permanent resident: Article 8, paragraph 2, merely limits, for the first five years, the protection accorded to persons immediately granted the status of permanent resident. Where a country does not accord the status of permanent resident until after a longer period of residence than five years, Article 8, paragraph 1, does not become applicable until the qualifying period for permanent residence has elapsed. Thus, in the country in question it would be sufficient, in order to comply with Article 8, to link the prohibition on expulsion to the grant of a permanent resident's permit, for which the normal qualifying period is ten years.

## 2. Protection in case of loss of employment

### (a) Continued residence and alternative employment

459. Convention No. 143 provides, in Article 8, that a lawfully resident migrant worker who loses his job shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit. It goes on to provide, in paragraph 2, that, "Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining."

460. Certain related provisions are contained in the Recommendations. According to Paragraph 18 of Recommendation No. 86, a State should refrain from removing migrant workers and their families who have been regularly admitted to its territory on account of their lack of means or the state of the employment market, and Paragraph 31 of Recommendation No. 151 provides that a migrant who has lost his employment should be allowed sufficient time to find alternative employment, at least for a period corresponding to that during which he may be entitled to unemployment benefit.

461. The situation of a migrant worker who has lost his employment depends on the nature of his authorisation of residence or work permit. Immigrants who have been admitted as,<sup>7</sup> or acquired the status of, permanent residents or become entitled to an unlimited work permit,<sup>8</sup> are assimilated to nationals in respect of employment, so that the loss of their employment has no effect on their status; they similarly enjoy equality of treatment in respect of the matters set out in paragraph 2 of Article 8.

462. The situation is more complex in the case of a migrant worker with a limited work permit. In some countries,<sup>9</sup> which issue

work permits only for a specific job with a specific employer, the worker has to leave the country when the contract for which the work permit was issued comes to an end. Generally, however, the loss of his employment does not normally appear to place the migrant worker admitted with a work permit for a specific job in an illegal situation, although he will only be able to take up further employment if he obtains a new work permit. A number of countries<sup>10</sup> indicate that such a permit will only be issued if the state of the labour market and the need to accord priority to their nationals (to whom permanently admitted migrants are assimilated) permit.

463. Law and practice as to the length of time a migrant worker is permitted to stay in the country to look for further employment vary. In some countries<sup>11</sup> the worker is allowed to remain as long as he is entitled to unemployment benefit; one government<sup>12</sup> indicates that if necessary the authorisation of residence will be extended to cover this period. In one country,<sup>13</sup> in which the migrant worker has in principle to leave the country within two weeks of the premature termination of his contract, he can on application be authorised to stay for a maximum of three months to seek alternative employment. Other governments<sup>14</sup> do not specify the period for which a worker will be allowed to remain to seek alternative employment. In some cases,<sup>15</sup> it may be defined by reference to the period of validity of the residence permit; in one such case<sup>16</sup> the worker is allowed to remain for a period of twelve months after the date on which his residence permit was due to expire.

464. In one country,<sup>17</sup> in which work permits are limited as to time but not as to occupation, the work permit may be withdrawn if the worker is unemployed for a period of at least three months. In another country,<sup>18</sup> where at present the work permits of workers who have become involuntarily unemployed are extended, for three months in the case of temporary work permits and for one year in the case of ordinary or unlimited work permits, legislation is envisaged which would permit the withdrawal of the work permit of foreigners who have been unemployed for at least six months, and the government considers that this would be contrary to the objectives of the Convention as expressed in Articles 8 and 10.

465. Several other countries have also indicated that their legislation does not appear to comply with Article 8. One<sup>19</sup> has stated that Article 8, paragraph 1 is not fully applied because, once a migrant worker has exhausted his right to unemployment benefit and is not authorised to seek further employment so that his means of support are no longer assured, his authorisation of residence will be withdrawn or not renewed. This situation does not however seem to be contrary to the provisions of Article 8, paragraph 1, whose purpose is essentially to ensure that a regularly admitted migrant worker who becomes unemployed shall not be regarded as in an irregular or illegal situation, and which requires only that "the mere fact of the loss of his employment ... shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit". The country concerned allows the migrant worker who has lost his job to remain as long as he is entitled to unemployment benefit, if necessary prolonging his residence permit for this purpose thus giving him a reasonable period in which to seek and obtain authorisation to take further employment; Article 8, paragraph 1, does not appear to require more. Similarly, the proposed period of six months before the work permit is withdrawn, mentioned in the previous paragraph, would seem to meet the requirements of this provision, although it would not give effect to Paragraph 31 of Recommendation No. 151 in cases in which unemployment benefit is payable for longer than six months.

466. More serious difficulties have been referred to with regard to paragraph 2 of Article 8, which provides for equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining. Three countries<sup>20</sup> have stated in this regard that migrant workers who lose their employment and have not acquired the status of permanent resident will only be granted a further permit to take other employment if the situation and trends on the labour market permit, and after it has been ascertained that no national or permanently admitted foreigner is available for the employment in question. Another country,<sup>21</sup> which admits migrants under two heads, permanent settlement and temporary residence, has stated that acceptance of Article 8 would mean that temporary residents could expect, on completion of their contracts, to apply for permanent residence, retraining, etc.

467. The wording and context of this paragraph undoubtedly give rise to a number of questions, and its scope needs to be clarified. For this purpose, it seems appropriate to examine the legislative history of the provision. In the conclusions adopted at the first discussion of the proposed Convention, it was included, with a slightly different wording, in Part II of the Convention dealing with equality of opportunity and treatment, as paragraph 2 of what is now Article 14. In the draft before the Conference at the second discussion the proposed second paragraph of this Article read as follows: "Paragraph 1 of this Article does not affect the right of migrant workers to enjoy equality of treatment with nationals in respect of security of tenure of employment, the provision of alternative employment and retraining."

468. Article 8 of the Convention was introduced during the second discussion, and its object was stated to be "to protect the migrant worker, who had entered the country of employment legally, against measures, in particular emergency measures, which might cause him to become an illicit migrant from one day to the next."<sup>22</sup> Following the adoption of Article 8, the proposed paragraph 2 of what is now Article 14 was deleted. A provision concerning equality of treatment was thus transferred from Part II to Part I of the Convention as a result of an amendment designed to ensure that legally admitted migrants did not lose their regular status by reason of their loss of employment. Certain problems arise in this connection, in particular as to the extent of the equality of treatment required and also as to the relevance of "guarantees of security of employment" to migrant workers who have lost their jobs. The governments' reports have not referred to the latter problem, on which no light is thrown by the preparatory work.

469. It may be useful, in considering the extent of the equality of treatment required by paragraph 2 of Article 8, to refer first to a memorandum prepared by the International Labour Office in reply to a request for clarification of its terms:<sup>23</sup>

... It should first be noted that this provision is contained in Part I of the Convention, which deals with migration in abusive conditions, and not in Part II, which deals with national policies to be adopted and applied as regards equality of opportunity and treatment. This distinction is important because under Article 16 of the Convention, ratification may be restricted to either of the two Parts. Moreover, the use of the term 'accordingly' seems to indicate that Article 8, paragraph 2, is conceived, not as an end in itself, but as a means of reaching the objective sought in paragraph 1. In other words, the safeguards provided by paragraph 2 are to facilitate restoration

of the previous position of the migrant worker who has lost his employment, and should not result either in giving him more rights than he had at the outset or in placing him in a more favourable position than that of other migrant workers who have not lost their employment and remain subject to the conditions laid down in their permits. It would also seem unreasonable that a provision included in the part of the Convention which purports to protect migrant workers against abuse should provide for greater access to employment than the part dealing with equality of opportunity and treatment - which permits the free choice of employment to be restricted for a period, as will be seen below. It is within that framework that the effect of national regulations regarding residence and work permits has to be considered. There are two main observations which should be made.

8. First, the right to equal treatment which the migrant worker should enjoy in case of loss of employment remains subject to the duration of his residence or work permit. This means, in practice, that a migrant worker who has lost his employment and seeks to change his occupation is not entitled to training for new employment if this would continue beyond the duration of his residence or work permit. The same would apply to alternative employment in a case where the loss of the original employment occurs at a time when the residence permit expires.

9. Second, the safeguards which a migrant worker should enjoy in case of loss of employment may be subject to such conditions and limitations as are specified in his work permit, but these should not prevent attainment of the objective stated in Article 8, paragraph 1. Thus, if the work permit was originally issued to a migrant worker for a particular category of employment only, the equality of treatment as regards alternative employment which such a worker must enjoy under paragraph 2 of this Article will relate only to the same type of employment.

10. The arguments set out in the preceding paragraph presuppose that the worker retains his work permit after losing his employment. If on the other hand only his residence permit remains valid, it would seem that the equality of treatment required under paragraph 2 of Article 8 of the Convention cannot be subject to limitations other than those mentioned in paragraph 8 of the present paper. Accordingly, legislation under which the issue of work permits to migrant workers who have lost their jobs may be refused on the basis of the employment market situation would not be in conformity with the Convention.

470. It seems clear, as indicated in this memorandum, that Article 8, paragraph 2, does not require a State to extend a migrant worker's residence permit, but relates only to equality of treatment within the period of validity of that permit.

471. Moreover, having regard to the indication in the above quoted memorandum that it would seem unreasonable that a provision in Part I of the Convention should provide for greater access to employment than Part II which deals with equality of opportunity and treatment, it may be considered that Article 8, paragraph 2, should be read in the light of Article 14 of the Convention under which a State may restrict free choice of employment during the first two years. Accordingly, a State would be able, in the provision of alternative



employment to a migrant worker who had lost his employment during his first two years of residence but whose residence permit was still valid, to impose limitations on his free choice of employment.

472. There is no doubt that the inclusion in Part I, which was intended originally to deal only with migration in abusive conditions, of provisions relating to equality of treatment of regularly admitted migrants is considered an obstacle to ratification by a number of States of immigration which accord the guarantees called for by Article 8, paragraph 2, only to permanently admitted immigrants, and hence usually only after some years of residence and employment.

(b) Appeal against termination of employment

473. Paragraph 32 of Recommendation No. 151 provides that a migrant worker who has lodged an appeal against the termination of his employment should be allowed sufficient time to obtain a final decision, and if the termination is unjustified he should be entitled to the same remedies as national workers, as well as sufficient time to find alternative employment if he is not reinstated.

474. No problems have been mentioned by reporting countries in connection with this provision. In general it would appear that the availability of the same remedies as those accorded to nationals is assured by equal treatment in the application of labour and other relevant legislation. The allowance of sufficient time to obtain a final decision and alternative employment if not reinstated can be presumed, in the absence of specific information,<sup>24</sup> to be governed by the general rules described above concerning continued residence and alternative employment in the case of loss of employment, which generally allow a migrant worker who has lost his job to remain in the country for a period and, subject to limitations in some cases, to seek alternative employment.

3. Guarantees in case of expulsion

475. Paragraph 33 of Recommendation No. 151 provides in essence that a migrant worker who is the object of an expulsion order should have a right of appeal before an administrative or judicial instance, and that the appeal should stay the execution of the expulsion order, subject to requirements of national security.<sup>25</sup>

476. In general, provisions concerning the expulsion of foreigners from a country are contained in immigration legislation and applicable to foreigners generally, no specific provision being made in respect of migrant workers. The legislation in question is very complex, and, since immigration control as a whole is a matter outside the competence of the ILO, it does not seem appropriate to analyse it in detail with a view to examining all its possible repercussions on migrant workers. Expulsion of migrant workers may be ordered in two quite different types of circumstances: first because they do not or no longer have an authorisation to reside or work in the country or are in breach of the conditions of their residence or work permit, and secondly because, during a period of legal residence and employment, they have been guilty of conduct which constitutes grounds for expelling a foreigner irrespective of whether he is a worker.

477. In only one of the few countries which have provided information in their reports on expulsion procedures, is a distinction made between the two types of cases: in the country concerned<sup>26</sup> a deportation order can only be made on the basis of conviction for a criminal offence if the court, when sentencing the offender, recommends that he be deported. He then has a right of appeal against the recommendation as forming part of his sentence, and no deportation order may be issued until the appeal has been heard. A deportation order can also be made on the ground that the immigrant has failed to observe the conditions of his authorisation to reside, or stayed beyond the permitted period, or on the ground that his deportation would be "conducive to the public good". In these cases, except in the case of an order based on the interests of national security or reasons of a political nature, an appeal lies to an independent adjudicator and to a special appeal tribunal, and suspends the deportation order. Cases involving national security or political reasons are referred to a panel of advisers.

478. In other countries, the procedure is the same whatever the grounds for expulsion. Thus, in one country<sup>27</sup> foreigners can only be expelled on the basis of a "prohibition of residence order" issued by the administrative authorities, and it is against this order that an appeal lies to a higher administrative instance. An appeal at this earlier stage would seem to correspond in substance to an appeal against the expulsion order itself. The appeal has a suspensive effect unless immediate expulsion is in the interest of the person concerned or in the public interest which would be endangered by any delay. In a second country,<sup>28</sup> a deportation order can only be issued following an inquiry by an independent adjudicator, at which the immigrant concerned has the right to be represented. If the adjudicator issues a deportation order against an immigrant with "permanent resident" status, he has a right of appeal, with suspensive effect, to an independent appeal board, followed by a judicial appeal on questions of law to the court of appeal with its leave. Deportation orders against temporary immigrants are also preceded by an inquiry by an adjudicator but are not subject to appeal: however, such immigrants may apply to a court of law for a review of the decision on the grounds that it is contrary to natural justice and, if the application is not evidently a frivolous delaying tactic, a stay of execution of the deportation order is normally granted. It would seem in any event that the requirement of an inquiry by an independent adjudicator before a deportation order can be issued provides the sort of protection afforded by a right of appeal against an order issued without such inquiry.

#### 4. Protection on leaving the country of employment

479. Paragraph 34 of Recommendation No. 151 provides for certain guarantees to migrant workers who leave the country of employment, irrespective of the legality of their stay. The rights of illegally employed migrant workers in this regard have been considered, in paragraphs 259 to 270 above in connection with Article 9, paragraph 1, of Convention No. 143. This section is accordingly limited to considering the extent to which regular migrant workers are assured of the guarantees provided for by this Paragraph, which cover the following matters.

(a) Remuneration and compensation  
for holiday entitlement

480. As indicated in Chapter IV above, regularly employed migrant workers invariably enjoy equality of treatment as regards conditions of employment. They are accordingly entitled on leaving the country at the end of their employment to the same rights as nationals in respect of outstanding remuneration for work performed, severance payments and compensation in lieu of any holiday entitlement acquired but not used, as called for by Paragraph 34(1)(a) and (c)(i). This has been specifically confirmed by some governments<sup>29</sup> in their reports.

(b) Employment injury benefits

481. Although regular migrant workers are invariably covered by employment injury insurance or workmen's compensation schemes, these schemes do not always provide for payment of benefits to a beneficiary residing abroad, as is called for by Paragraph 34(1)(b). Several governments<sup>30</sup> have however indicated that this lacuna is filled in practically all cases either by bilateral agreements with the countries of origin of migrant workers or by the ratification of the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19).

(c) Reimbursement of social  
security contributions

482. Paragraph 34(1)(c)(ii) provides for reimbursement of social security contributions which have not and will not give rise to rights under national laws or regulations or international arrangements. It adds the proviso that where such contributions do not permit entitlement to benefits every effort should be made with a view to the conclusion of bilateral or multilateral agreements to protect the rights of migrants.

483. The Recommendation thus envisages, as an alternative and preferable solution to reimbursement, the conclusion of agreements for the maintenance of rights in course of acquisition by virtue of contributions in the country of immigration, for example through their transfer to the country to which the migrant worker goes when he departs.

484. Governments have in general not touched on this matter in their reports. One country,<sup>31</sup> however, which makes no provision for the reimbursement of social security contributions, has concluded bilateral agreements with all the principal countries of origin of immigrant workers, under which a certificate of the worker's social security contributions is, when he leaves the country, communicated to the social security institution of the migrant worker's home country. Another country<sup>32</sup> indicates that when a migrant worker leaves the country permanently he may withdraw his contributions to the central provident fund.

(d) Right of redress

485. Paragraph 34(2) of Recommendation No. 151 provides that where any claim in respect of the matters dealt with under (a) to (c) above is in dispute, the worker should be able to have his interests represented before the competent body and enjoy equal treatment with national workers as regards legal assistance. Very few governments<sup>33</sup> have expressly confirmed that this provision is applied. Reference may however also be made to paragraph 170 above, which deals with the corresponding provision of Convention No. 143 (Article 9, paragraph 2) in respect of illegally employed migrant workers.

---

Notes to Chapter VI

<sup>1</sup> See RCE, 1979, p. 161, observation to Guatemala.

<sup>2</sup> Federal Republic of Germany: Government's report for 1974-76, following a direct request of the Committee in 1975 concerning the application of section 10, paragraph 1(9) and 11(1) of the Aliens Act of 28 February 1965.

<sup>3</sup> United Kingdom: Government's report for 1972-74 following a direct request of the Committee in 1973 concerning the application of section 90 of the Mental Health Act, 1959, section 82 of the Mental Health (Scotland) Act, 1960 and section 30 of the Immigration Act, 1971.

<sup>4</sup> Australia, Canada, Singapore.

<sup>5</sup> Austria, Luxembourg, Sweden.

<sup>6</sup> Switzerland.

<sup>7</sup> As in Australia, Canada, New Zealand.

<sup>8</sup> As in Austria, Federal Republic of Germany, Luxembourg, Sweden, Switzerland, United Kingdom.

<sup>9</sup> As in Botswana, Gabon, Italy, Malaysia (Sarawak), Mauritius, Tanzania.

<sup>10</sup> Austria, Federal Republic of Germany, Luxembourg, Switzerland.

<sup>11</sup> Austria, Federal Republic of Germany, Luxembourg.

<sup>12</sup> Austria.

<sup>13</sup> Gabon: Labour Code, 1978, section 133 and Act No. 34-62 of 10 December 1962 on the admission and residence of foreigners, section 7, paragraph 4.

<sup>14</sup> Belgium, Cyprus, Dominican Republic, Peru, Switzerland, United Kingdom.

<sup>15</sup> Australia, Canada, New Zealand.

<sup>16</sup> Netherlands.

<sup>17</sup> Kuwait.

<sup>18</sup> France.

<sup>19</sup> Austria.

<sup>20</sup> Austria, Federal Republic of Germany, Switzerland.

<sup>21</sup> Australia.

<sup>22</sup> ILC, 60th (1975) Session, RP, p. 642: report of the Committee on Migrant Workers, para. 45.

<sup>23</sup> Official Bulletin, Vol. LXII (1979), Series A, No. 3, pp. 157-8.

24 Cyprus has indicated that a migrant worker appealing against termination of employment would be allowed sufficient time to obtain a decision.

25 It may be noted in this regard that article 13 of the United Nations International Covenant on Civil and Political Rights, which also contains provisions concerning appeals against expulsion, provides in addition that legal immigrants may be expelled only in pursuance of a decision reached in accordance with law.

26 United Kingdom.

27 Austria.

28 Canada.

29 Cyprus, Luxembourg, Mali, Singapore. Non-metropolitan territory: United Kingdom (Hong Kong).

30 Austria, France, Federal Republic of Germany.

31 Austria.

32 Singapore.

33 Mexico; Non-metropolitan territory: United Kingdom (Hong Kong).

## CONCLUSIONS

### DIFFICULTIES AND RATIFICATION PROSPECTS

486. The vast range of subjects covered in the preceding chapters illustrates the complexity of the subject of migration for employment. The principles of the "protection of the interests of workers when employed in countries other than their own" and "the provision ... of facilities for ... the transfer of labour, including migration for employment and settlement", proclaimed in the Preamble to the Constitution and the Declaration of Philadelphia as objectives of the ILO, have been developed in the four instruments into a vast programme of national and international action covering almost all the problems which arise when workers migrate from one country to another in order to take up employment.

487. The measures needed for the protection of migrant workers, as set forth in the instruments, extend beyond their period of actual employment. They must cover the initial phases of information, recruitment, travel and settlement into the country of employment and also post-employment problems of return to the country of origin or arrangements for continued residence in the country of employment and the regulation of rights arising out of the employment but continuing after its termination. During the period of employment, moreover, they go beyond measures dealing exclusively with conditions of work such as equality of treatment and adaptation to the working environment, to cover various other aspects of conditions of life which affect the context in which the migrant worker has to work and form the broader framework of the conditions of work and life of migrant workers.

488. In these circumstances it is perhaps understandable that few governments have covered all the subjects dealt with in the instruments in their reports. It is nonetheless regrettable that so many governments have supplied only very brief reports, and have often failed to provide information on even the major aspects of migration for employment as it affects their countries. Moreover, many countries have failed to supply reports on any of the instruments, and these include several countries with a substantial flow of emigrant or immigrant workers.

489. Convention No. 97 has been ratified to date by 34 countries, including several major countries of emigration or immigration. Ratifications succeeded one another at a steady pace until 1969, when there was a pause. The adoption of Convention No. 143 led to a revival of interest in Convention No. 97, and four further ratifications have been registered since 1976. Generally speaking, most of the countries to which the Convention applies and whose legislation or practice has been the subject of observations on the part of the Committee have taken or are planning to take the necessary

steps to eliminate the discrepancies noted or remedy certain shortcomings. Convention No. 143 has been ratified so far by only eight States, one of which excluded Part I from its ratification, and none of which is a major country of emigration or of immigration. The Convention only entered into force on 9 December 1978, and reports under article 22 of the Constitution have been received so far from only two ratifying States so that the Committee has not yet had an opportunity of forming an assessment of its application in the States which have ratified it.

490. The Committee has referred in the course of this survey to various problems and difficulties which the application of the Conventions poses for member States, and has sought to provide explanations as to the scope of the Conventions which may help governments in assessing the compatibility of their law and practice with the Conventions' provisions or in finding solutions to their difficulties. It seems useful, in concluding this survey, to recapitulate the major difficulties encountered and their bearing on the application of the Conventions.

#### Issues common to Conventions Nos. 97 and 143

491. A number of governments have stated that since there are no migratory flows in their countries it is not necessary to modify their policy with respect to migrant workers. The absence of official machinery to control emigration has been mentioned as an obstacle to ratification. Where for economic, demographic, geographical or other reasons there is no flow of emigration or immigration in a country, it goes without saying that special measures in respect of migrant workers are not warranted. However, it should be borne in mind that migratory trends are highly changeable. For instance, in a number of countries traditionally considered to be countries of emigration the number of foreign workers is growing steadily. This is also true of certain countries<sup>1</sup> now going through a period of intensive economic development whose national labour force no longer suffices to meet their needs. In such cases appropriate measures should be taken to meet this new situation. Conversely, it may happen that following a change in the immigration policy, as in the case of several European countries in particular, the facilities provided to assist immigrant workers on their arrival are less used than in the past.

492. In the opinion of one government, the federal structure of the State in question makes it difficult to implement these instruments, since some matters fall within the competence of its constituent states. As already pointed out, Article 6 of Convention No. 97 contains a specific provision to allow federal States to ratify the Convention even where, owing to the division of responsibilities between the federal government and the administrative authorities of the constituent states, they are unable to discharge fully the obligation deriving from the principle of equality of treatment contained in the Convention. Similarly, the standards laid down in Part II of Convention No. 143 have been couched in terms sufficiently flexible to enable them to be implemented without interfering with the constitutional system. Finally, in more general terms, the measures which have to be adopted to give effect to the instruments on migrant workers may be taken by the constituent states where the matter falls within their competence.

493. For two governments, one of the main problems lies in the fact that their immigration policy is not specifically concerned with migration for employment. This policy makes a distinction between immigrants who come to the country to settle permanently and persons who are admitted for a specific purpose and for a limited period of time, the question of whether or not they intend to take up employment not being a decisive factor. Although both the 1949 and 1975 instruments refer only to migrants for employment, there is nothing to prevent their provisions from being implemented by means of measures applicable in general to all categories of migrants and not only to migrants for employment. The difficulties resulting from restrictions on the employment of migrants admitted temporarily to such countries will be referred to later in connection with Part II of Convention No. 143.

#### Issues relating to Convention No. 97

494. The achievement of the objectives pursued by Convention No. 97 depends largely on measures taken unilaterally by States. However, the action taken by the public authorities can be much more effective if arrangements are made for co-operation between the countries of immigration and of emigration. This is why Article 10 of Convention No. 97 refers to the conclusion of agreements between States to resolve any problems arising in connection with the migration of workers from one country to another. In this connection one government states that it is its policy to conclude international agreements on migration only in exceptional cases. The importance of collaboration between States has been emphasised throughout this survey, which has attempted to focus attention on the action that can be taken at both the national and the international level. However, according to the actual terms of Article 10 of the Convention, international agreements should be entered into where the number of migrants involved is large enough to warrant such a step, and in so far as this is necessary and desirable to facilitate the regulation of matters of common concern arising in connection with the application of the provisions of the Convention. This instrument does not therefore make it absolutely compulsory to enter into international agreements in every case, but on the contrary allows States a very wide margin of discretion.

495. Some countries attribute the difficulties they have in giving effect to the Convention to the inadequacies of their administrative machinery. Others point to the non-existence of the assistance and information services called for in Article 2 of the Convention. Inadequate material facilities, in particular for providing information to migrant workers and facilitating their departure and reception, obviously constitute a serious obstacle. It would accordingly be desirable in countries affected by migratory flows for efforts to be made in this connection by the public authorities, or by voluntary bodies under their supervision.

496. The non-existence of specific legislation to combat misleading propaganda has been mentioned as a possible impediment to ratification of the Convention. It should be pointed out that under the terms of Article 3 of the Convention it is for governments to decide upon the manner in which they intend to combat false or mendacious propaganda relating to emigration and immigration, for instance by enacting legal provisions imposing penalties for misleading propaganda, by taking steps to verify or correct the information supplied to migrants or by adopting more general measures with respect to recruitment.



497. Article 5 of the Convention requires migrant workers and members of their families to be medically examined twice - at the time of departure and on arrival. However, with the evolution in transport facilities and the development of air travel it may be conceded that a proper check on the state of health of migrants in their country of origin should suffice in most cases to meet the purposes of this provision of the Convention. Consequently, in so far as migrant workers and their families are medically examined prior to their departure, countries of immigration should be free to decide whether or not they wish to submit them to a further check-up, unless there are reasons to doubt the quality of the examinations carried out in the countries of emigration.

498. One government has stated that the provisions of its legislation permitting the expulsion of aliens who become permanently dependent on public assistance are contrary to Article 8 of the Convention, and that this is also true for the draft legislation on aliens now under consideration, which authorises the expulsion on these grounds of aliens who have been residing in the country for less than ten years. Article 8 of the Convention prohibits the return of migrant workers and their families to the country from which they emigrated in the event of incapacity for work only in so far as they have been admitted on a permanent basis, irrespective of the length of the period of residence necessary in order to acquire the status of a permanent resident. One means whereby the country in question could give effect to this provision of the Convention would accordingly be to restrict expulsion on the aforementioned grounds to aliens who do not hold a permanent residence permit, normally granted after ten years' residence.

499. Certain questions relating to equality of treatment in respect of vocational training and membership of trade unions will be mentioned within the context of Part II of Convention No. 143.

#### Issues relating to Convention No. 143

##### Part I

500. Certain governments have indicated, in relation more particularly with Part I of the Convention, that they have not taken specific legislative or administrative measures of the kind called for by the Convention against clandestine or illegal migratory movements or illegal employment of migrant workers. In some cases, the absence of such measures may be due to the fact that the country concerned is not affected by such movements and hence has hitherto had no need to take special action. In others, it may be due to the absence of an adequate administrative infrastructure to implement the measures provided for. In any event, legislation dealing specifically with clandestine movements of migrants is not necessarily called for under the Convention if existing provisions - for example relating to employment agencies and recruiting procedures, immigration control, general criminal law - provide an adequate legal framework for the detection and suppression of clandestine movements of migrants and for action against the organisers of such movements.

501. In requiring ratifying States to "systematically seek to determine" the existence of clandestine movements of migrants and of illegal employment of migrant workers, what the Convention would seem

to require in the first instance is vigilance on the part of the emigration, immigration and labour authorities in the exercise of their normal functions. If there is no evidence of any abuse, no more would seem to be required. Once it appears that clandestine movements of manpower are developing, it may be sufficient, depending on the national system and structure, to reinforce existing controls; in other cases, supplementary measures may be found necessary, in particular the introduction of sanctions against the organisers of such movements, in accordance with Article 6, where such sanctions do not yet exist. It seems none the less that in some countries the absence of adequate administrative machinery or the length of the land frontiers makes enforcement of the existing provisions or the introduction of additional controls difficult, and constitutes a practical obstacle to early ratification. These problems may be exacerbated by the lack of economic opportunities in countries of emigration, which encourages workers to seek employment abroad even if they have to resort to clandestine means of crossing the frontiers. This form of pressure to emigrate can be relieved only by long-term action, which calls for collaboration among the countries concerned.

502. It should be emphasised that, as in the case of ILO instruments generally, the Convention lays down minimum standards, so that the fact, mentioned by one country, that its system for the control and suppression of illegal immigration goes beyond what is foreseen by the Convention would not seem to constitute in itself an obstacle to ratification.

503. The provisions of Article 5 concerning the prosecution of the authors of manpower trafficking, whatever the country from which they exercise their activities, have given rise to the objection that they would seem to involve an obligation to create extra-territorial offences and hence give rise to problems of jurisdiction. As the Committee has pointed out, this is not the case. The Convention requires only that States shall collaborate and exchange information so that manpower traffickers can be prosecuted in an appropriate jurisdiction; this may involve, for example, extradition procedures and measures to assist the prosecuting authorities in obtaining the necessary evidence.

504. The provision that the illegal employment of migrant workers shall be the subject of administrative, civil and penal sanctions which include imprisonment in their range causes problems for a number of States.

505. In some countries, the only penalty provided for is a fine; in others imprisonment is limited to certain specific forms of illegal employment. The latter situation, in which imprisonment is not foreseen for all cases of illegal employment, would not seem to be contrary to Article 6, paragraph 1 of the Convention, which leaves it to each State to define the sanctions to be applied. As long as they include imprisonment in their range for certain offences, the requirements of the Convention can be considered as satisfied.

506. Under some systems, however, it is not an offence for an employer to employ an immigrant who is not authorised to work. The governments concerned indicate that there is no system of documentation which would readily show that a person is or is not entitled to take up employment, and that the introduction of sanctions would impose on employers an unreasonable burden to ascertain the conditions on which the immigrant entered the country, an event which may have taken place many years before he was engaged.

507. Since under the Convention it is for each country to define the sanctions to be applied, it does not seem essential that they should be imposed for an offence defined in terms of illegal employment as such. Thus in one country an employer may be punished with a fine or imprisonment if he fails to notify the police of the engagement of a foreign worker before the employment commences. Since an employer is unlikely to make such notification if he knows that the worker is not entitled to take up employment, the sanctions which may be imposed would meet the requirements of the Convention; the fact that the offence in question is defined in terms other than of illegal employment would not seem to affect the application of the Convention.

508. It seems none the less that the requirement of Article 6, paragraph 1, that sanctions which include imprisonment in their range must be introduced in respect of the illegal employment of migrant workers constitutes an obstacle to the acceptance of Part I of the Convention in an appreciable number of countries, either because it is not an offence to employ a worker who is not entitled to work, or more frequently because the penalties which may be imposed do not include imprisonment.<sup>2</sup>

509. It is worth emphasising, in view of the terms of Article 6, paragraph 2 and the doubts it has raised in the minds of certain governments, that it is for national laws or regulations to define the precise nature of the offence of illegal employment, and to determine, in accordance with the national legal system, the extent to which the prosecution must prove that the employer acted knowingly. The provision that an employer shall have the right to furnish proof of his good faith is not intended to reverse the normal burden of proof, but as an additional safeguard to protect employers in cases in which the prosecution is not required to prove that they acted knowingly.

510. The initial purpose of Article 8 of the Convention, as expressed in paragraph 1, seems to be to protect lawfully resident migrant workers who have lost their jobs from being treated as irregular immigrants, to whom Part I of the Convention applies, by the mere fact of the loss of their employment. In general, paragraph 1 of Article 8 does not appear to cause problems, although one country has indicated that the termination of the employment for which a work permit was issued, on whatever grounds, will normally lead to the withdrawal of the residence permit.

511. Clearly, if a work permit has been issued for a specified job, loss of that job will automatically mean that the work permit lapses. What the Convention requires in such cases is that the residence authorisation should not similarly be automatically withdrawn. It does not however require that a residence permit should be extended or renewed as one government appears to think, or that it may not be withdrawn on other grounds, as in one country in the case of a migrant worker who has been unable to obtain another job and has exhausted his right to unemployment benefit; and hence no longer has the means of supporting himself. Similarly, it would not be contrary to this provision to withdraw the work permit of a migrant worker who has remained unemployed for a specific period, which one country is proposing to fix at six months.

512. Paragraph 2 of Article 8 requires that regularly admitted migrants who have lost their jobs shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining. The inclusion in Part I of the Convention of provisions

concerning equality of treatment causes problems for a number of governments as regards migrant workers who have not acquired the status of permanent resident or been granted an unlimited work permit, and who will only be given a new work permit if the state of the labour market permits, priority being accorded to nationals.

513. The Committee has provided indications as to the extent of the obligation imposed by Article 8, paragraph 2. They may be summarised as follows. Paragraph 2 is not to be construed so as to put the migrant worker in a better position than if he had not lost his job. Accordingly, if his work permit remains valid any restrictions imposed by it, as to occupation or geographical region for example, will remain in force, so that the worker must only be granted equality of treatment in respect of jobs in the occupation or geographical area for which his work permit has been issued. Moreover, paragraph 2 only applies within the limits of validity of the migrant worker's authorisation to remain in the country. He must thus be granted equal treatment in the provision of alternative employment for the remainder of the period during which his residence permit, or his work permit if it remains in force, is valid; the State is not required to extend the validity of the permit. The objection of one country that this provision would mean that temporary migrant workers could expect on completion of the contracts for which they had been admitted to apply for permanent resident status thus does not seem to be well founded.

514. Finally, Article 8, paragraph 2, is to be construed in the light of Article 14 of the Convention, which requires that free choice of employment be guaranteed after two years of lawful residence, so that a State may impose limitations on the free choice of employment of a migrant worker who has lost his job during his first two years of residence.

515. The minimum standards of protection for irregularly employed migrant workers laid down in Article 9 of the Convention have been the subject of certain comments.

516. One government has indicated that it is unable to apply paragraph 1 of Article 9 because it does not accord equality of treatment to migrant workers in respect of certain limited aspects of social security. However, this is true for all migrant workers, not only those in an irregular situation, and equal treatment of regular migrants in respect of social security is the subject of Part II of the Convention, which may be accepted separately. It would seem from the wording and context of Article 9, paragraph 1, that it should be understood as requiring equality of treatment of irregular migrant workers not with nationals but with regularly admitted and lawfully employed migrants. The fact that a State is unable to accept Part II of the Convention because it does not satisfy its provisions concerning equality of treatment in all respects should not preclude it from accepting Part I if it treats irregular migrant workers on the same basis as regular migrants in respect of the rights arising out of past employment listed in Article 9, paragraph 1.

517. A final problem raised in connection with Part I of the Convention concerns the costs of expulsion which, according to Article 9, paragraph 3, should not be borne by the migrant worker or his family. It must be pointed out that this provision refers to the costs of expulsion and not the costs of repatriation. Accordingly the provisions in force in certain countries under which the irregular migrant worker himself is liable to pay the costs of his travel to his country of origin are not contrary to the Convention. It is only when,

as appears to be the case in some countries, he has to bear the costs of the actual expulsion procedures that there would be an incompatibility with the Convention.

## Part II

518. The declaration and pursuit of a policy of equality of opportunity and treatment as provided for in Article 10 of the Convention has been mentioned by a number of States as being likely to give rise to certain problems.

519. In one country, although according to the Government the principle of equality of opportunity and treatment is recognised in practice, there is no general enactment explicitly formulating a policy to this effect. While the Convention specifies what the content of a national policy on equality of opportunity and treatment should be, it does not impose conditions as to the form such a policy should take. Consequently, it is just as permissible for such a policy to be formulated through a series of administrative or statutory measures as for it to be spelt out in a policy declaration submitted by the government to the legislative authority or issued in any other manner consistent with national practice.

520. Some governments have stated that the policy of equality of opportunity and treatment cannot be fully applied to migrant workers whose access to employment is subject to restrictions for a specified period. In fact this problem cannot be dissociated from the questions relating to freedom of choice of employment which will be examined below. An objection of a similar nature has been made by a government which is of the opinion that equality of treatment cannot be achieved in every respect in the case of seasonal workers. As migrant workers, seasonal workers are covered by the provisions of Convention No. 143, and are accordingly entitled to benefit from the policy of equality of opportunity and treatment in respect of matters having an immediate impact such as conditions of work, trade union rights, etc. However, the possibility of enabling them to benefit from measures which demand a certain time, such as vocational training is in practice much more limited when account is taken of the temporary exceptions in respect of free choice of employment authorised by Article 14(a) of the Convention.

521. As concerns federal States, as already stated the flexible terms in which Article 10 of the Convention is couched should enable federal authorities to declare a national policy which may be implemented by such methods as are appropriate under the country's constitutional system. For identical reasons the fact that the implementation of the Convention depends to a large extent on collective bargaining cannot in itself be regarded as an obstacle to the acceptance of the obligations deriving from Part II of the Convention. In such cases the public authorities may exert their influence in ways "appropriate to national conditions and practice" by requesting the employers' and workers' organisations for their co-operation in the pursuance of the national policy.

522. Under the terms of Article 12(d) of Convention No. 143 States are required to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy of equality of opportunity and treatment, which, under the terms of Article 10, must cover employment and occupation, social security, trade union and cultural rights and individual and collective

freedoms. A similar obligation stems from Article 6 of Convention No. 97 as concerns basic conditions of work, vocational training, membership of trade unions, accommodation, social security, employment taxes and dues and legal proceedings. According to the information available, explicitly discriminatory provisions are to be found in respect of certain matters mainly concerned with access to employment, trade union rights and social security.

523. In fact it is the restrictions imposed by national laws or regulations in respect of access to employment which constitute the most serious obstacle to the ratification of this Part of the Convention. In many countries, national regulations restrict the freedom of migrant workers to choose their employment for a period longer than that authorised by Article 14(a) of the Convention, which is two years. Furthermore, in certain developing countries pursuing a policy of reserving jobs for national workers and in certain States traditionally regarded as countries of emigration but which for some years have been receiving a growing number of immigrants, foreign workers may not change their job without applying for a new permit, irrespective of the duration of their residence or their employment. The same is the case in countries whose policy makes a distinction between immigrants admitted on a permanent basis and temporary migrant workers, as far as workers in the latter category are concerned. Restrictions on the access to employment of foreign workers may also result from the granting of priority of employment to nationals. Moreover, the free choice of employment of foreigners is likely to be severely compromised if, as is the case in some countries, they do not have access to the employment service. As a rule the restrictions imposed on foreign workers are also applicable to members of their families, who may not take a job without authorisation, unless they have acquired the status of permanent residents or an unrestricted work permit.

524. Equality of treatment in employment presupposes the enjoyment by foreign workers of job security on the same terms as nationals. This does not always appear to be the case. One government in particular has stated that in the event of retrenchment of staff, foreigners should be the first to lose their jobs.

525. The right to belong to a trade union is generally accorded to foreign workers on the same terms as nationals. In some countries, however, aliens may be prohibited from joining trade unions or allowed to join only subject to certain conditions. Eligibility for trade union office, on the other hand, is far more often the subject of discriminatory provisions either reserving the exercise of the functions of leadership for nationals or stipulating that a proportion of the officers of a trade union must be nationals. In a number of countries, however, the nationality requirement may be waived after a specified period of residence or employment or where a reciprocity agreement exists between the countries concerned.

526. As concerns vocational training, certain practices which may restrict the access of foreigners have been noted. However, vocational training should not be viewed as an end in itself, but as a means of acquiring qualifications for a specific type of job. In these circumstances, where under the national legislation certain jobs are not accessible to foreigners during a limited period, there can be no interest in making available training facilities for such jobs.

527. The implementation of the principle of equality of treatment in respect of social security has already been the subject of

a general survey by the Committee of Experts in 1977. Without reverting to the problems arising in this connection, the Committee has nevertheless endeavoured to dispel certain misunderstandings by specifying the implications of the reference to social security in Article 10 of Convention No. 143. It may be useful to recall that this reference was inserted to draw attention to the fundamental principle of equality of treatment in respect of social security already proclaimed by other instruments. It was accordingly not the intention either to deal with the technical aspects of the question or to call in question the principles already laid down in this respect by other instruments, including in particular Convention No. 118.

#### Ratification prospects

528. The numerous problems to which both Part I and Part II of Convention No. 143 no doubt give rise explain the fact that relatively few governments contemplate ratifying this instrument in the near future. It is more difficult to understand, on the other hand, why there are not more countries envisaging the ratification of Convention No. 97, since the obstacles encountered appear to be easier to overcome in the case of the latter instrument.

529. Some countries are nevertheless giving favourable consideration to the ratification of Convention No. 143. The Government of Spain has stated that it is considering what measures are necessary to enable the Convention to be ratified. In Finland, the revision of the labour legislation which is now in progress will take into account the discrepancies existing between the legislation and the Convention. In Italy, the Bill now before Parliament requires the Government to promulgate within a year the measures necessary to give effect to the Convention; in this connection the most representative organisations of employers and workers have requested that the Convention be ratified within the shortest possible time. The Government of Norway, which has already ratified Part II of Convention No. 143, has announced that it is revising its legislation with a view to removing the obstacles to the ratification of Part I. The same appears to be the case with Sweden as concerns both Convention No. 143 and Convention No. 97. Finally, the Government of Tunisia has stated that studies are now being made with a view to the ratification of both these instruments.

530. The Government of Argentina, for its part, has referred to the enactment of new legislation concerning migration which should enable certain difficulties in connection with the application of Convention No. 97 to be resolved. In addition the Government of Venezuela has stated that the ILO instruments concerning migrants should be a guide and serve as a source of reference during the drafting of the new legislation on migration which is now under way.

\*  
\*   \*  
\*

531. As this survey has made clear, difficulties exist in many member States in affording to migrant workers the guarantees provided for in the instruments. These difficulties most frequently result either from the absence of an adequate administrative infrastructure to assure the orderly recruitment, travel and reception of migrant workers - with the resulting danger that clandestine and abusive movements of

migrants will develop - or, once migrant workers have been regularly admitted to the country, from the operation of limitations which restrict their free access to the employment of their choice.

532. As far as the former type of difficulties is concerned the principles of the instruments seem to be generally accepted, and the problems are essentially practical ones of introducing appropriate arrangements. The question of free choice of employment for migrant workers is a much more complex one, involving as it does national policy in the fields of immigration and employment generally and the concern to protect the employment position of a country's own citizens.

533. On the practical level, moreover, migrant workers and their families face a wide variety of problems not only in obtaining employment in a foreign country but also in adapting to living and working conditions in the country of employment; this adaptation involves a continuing effort on the part of such countries as well as of the immigrants themselves, and the wide variety of measures taken in some countries to assist in this process have been described in earlier chapters.

534. The Committee in concluding would wish to express the hope that this survey will lead to a better understanding of the issues and problems which arise under the migrant workers' instruments and of the precise extent of the obligations which the Conventions impose, and hence to their fuller application and more widespread ratification.

#### Notes to Conclusions

<sup>1</sup> See in this regard J.P. Birks and C.A. Sinclair, International Migration and Development in the Arab Region (Geneva, ILO, 1979).

<sup>2</sup> It may be noted that in the earlier stages of the preparatory work sanctions were envisaged only for the employment of workers who have migrated in abusive conditions as defined in Article 2 of the Convention.





# APPENDICES

## APPENDIX I

### TEXT OF THE SUBSTANTIVE PROVISIONS OF THE MIGRANT WORKERS INSTRUMENTS

---

#### Migration for Employment Convention (Revised), 1949 (No. 97)

##### 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 for 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 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 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.

## 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 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 or 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 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 other 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 provisions of Article 8.

Article 13

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

## ANNEX III

IMPORTATION OF THE PERSONAL EFFECTS, TOOLS AND  
EQUIPMENT OF MIGRANTS FOR EMPLOYMENTArticle 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.

Migration for Employment Recommendation  
(Revised), 1949 (No. 86)

I

1. For the purpose of this Recommendation -
  - (a) 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;
  - (b) 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;
  - (c) 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 subparagraph (b);
  - (d) 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 subparagraph (c).

2. For the purpose of this Recommendation, references to the government, or competent authority of a territory of emigration should be interpreted as referring, in the case of migrants who are refugees or displaced persons, to any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any government.

3. This Recommendation does not apply to -
  - (a) frontier workers;
  - (b) short-term entry of members of the liberal professions and artistes; and
  - (c) seamen.

II

4. (1) It should be the general policy of Members to develop and utilise all possibilities of employment and for this purpose to facilitate the international distribution of manpower and in particular the movement of manpower from countries which have a surplus of manpower to those countries that have a deficiency.

(2) The measures taken by each Member should have due regard to the manpower situation in the country and the government should consult the appropriate organisations of employers and workers on all general questions concerning migration for employment.

### III

5. (1) The free service provided in each country to assist migrants and their families and in particular to provide them with accurate information should be conducted -

- (a) by public authorities; or
- (b) by one or more voluntary organisations not conducted with a view to profit, approved for the purpose by the public authorities, and subject to the supervision of the said authorities; or
- (c) partly by the public authorities and partly by one or more voluntary organisations fulfilling the conditions stated in subparagraph (b) of this Paragraph.

(2) The service should advise migrants and their families, in their languages or dialects or at least in a language which they can understand, on matters relating to emigration, immigration, employment and living conditions, including health conditions in the place of destination, return to the country of origin or of emigration, and generally speaking any other question which may be of interest to them in their capacity as migrants.

(3) The service should provide facilities for migrants and their families with regard to the fulfilment of administrative formalities and other steps to be taken in connection with the return of the migrants to the country of origin or of emigration, should the case arise.

(4) With a view to facilitating the adaptation of migrants, preparatory courses should, where necessary, be organised to inform the migrants of the general conditions and the methods of work prevailing in the country of immigration, and to instruct them in the language of that country. The countries of emigration and immigration should mutually agree to organise such courses.

6. On request, information should be made available by Members to the International Labour Office and to other Members concerning their emigration laws and regulations, including administrative provisions relating to restrictions on emigration and facilities granted to emigrants, and appropriate details concerning the categories of persons wishing to emigrate.

7. On request, information should be made available by Members to the International Labour Office and to other Members concerning their immigration laws and regulations, including administrative provisions, entry permits where needed, number and occupational qualifications of immigrants desired, laws and regulations affecting admission of migrants to employment, and any special facilities granted to migrants and measures to facilitate their adaptation to the economic and social organisation of the country of immigration.



8. There should, as far as possible, be a reasonable interval between the publication and the coming into force of any measure altering the conditions on which emigration or immigration or the employment of migrants is permitted in order that these conditions may be notified in good time to persons who are preparing to emigrate.

9. Provision should be made for adequate publicity to be given at appropriate stages to the principal measures referred to in the preceding Paragraph, such publicity to be in the languages most commonly known to the migrants.

10. Migration should be facilitated by such measures as may be appropriate -

- (a) to ensure that migrants for employment are provided in case of necessity with adequate accommodation, food and clothing on arrival in the country of immigration;
- (b) to ensure, where necessary, vocational training so as to enable the migrants for employment to acquire the qualifications required in the country of immigration;
- (c) 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 migrants for employment as the migrants may desire;
- (d) to arrange, in the case of permanent migration, for the transfer, where desired, to the country of immigration, of the capital of migrants for employment, within the limits allowed by national laws and regulations concerning export and import of currency;
- (e) to provide access to schools for migrants and members of their families.

11. Migrants and the members of their families should be assisted in obtaining access to recreation and welfare facilities, and steps should be taken where necessary to ensure that special facilities are made available during the initial period of settlement in the country of immigration.

12. In the case of migrants under government-sponsored arrangements for group transfer, medical assistance should be extended to such migrants in the same manner as provided for nationals.

#### IV

13. (1) Where necessary in the interest of the migrant, Members should require that any intermediary who undertakes the recruitment, introduction or placing of migrants for employment on behalf of an employer must obtain a written warrant from the employer, or some other document proving that he is acting on the employer's behalf.

(2) This document should be drawn up in, or translated into, the official language of the country of emigration and should set forth all necessary particulars concerning the employer, concerning the nature and scope of the recruitment, introduction or placing which the intermediary is to undertake, and concerning the employment offered, including the remuneration.

14. (1) The technical selection of migrants for employment should be carried out in such a way as to restrict migration as little as possible while ensuring that the migrants are qualified to perform the required work.

(2) Responsibility for such selection should be entrusted -

(a) to official bodies; or

(b) where appropriate, to private bodies of the territory of immigration duly authorised and, where necessary in the interest of the migrant, supervised by the competent authority of the territory of emigration.

(3) The right to engage in selection should be subject to the prior authorisation of the competent authority of the territory where the said operation takes place, in such cases and under such conditions as may be prescribed by the laws and regulations of that territory, or by agreement between the government of the territory of emigration and the government of the territory of immigration.

(4) As far as possible, intending migrants for employment should, before their departure from the territory of emigration, be examined for purposes of occupational and medical selection by a representative of the competent authority of the territory of immigration.

(5) If recruitment takes place on a sufficiently large scale there should be arrangements for close liaison and consultation between the competent authorities of the territories of emigration and immigration concerned.

(6) The operations referred to in the preceding subparagraphs of this Paragraph should be carried out as near as possible to the place where the intending migrant is recruited.

15. (1) Provision should be made by agreement for authorisation to be granted for a migrant for employment introduced on a permanent basis to be accompanied or joined by the members of his family.

(2) The movement of the members of the family of such a migrant authorised to accompany or join him should be specially facilitated by both the country of emigration and the country of immigration.

(3) For the purposes of this Paragraph, the members of the family of a migrant for employment should include his wife and minor children; favourable consideration should be given to requests for the inclusion of other members of the family dependent upon the migrant.

V

16. (1) Migrants for employment authorised to reside in a territory and the members of their families authorised to accompany or join them should as far as possible be admitted to employment in the same conditions as nationals.

(2) In countries in which the employment of migrants is subject to restrictions, these restrictions should as far as possible -

### Article 2

1. Each Member for which this Convention is in force shall systematically seek to determine whether there are illegally employed migrant workers on its territory and whether there depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations.

2. The representative organisations of employers and workers shall be fully consulted and enabled to furnish any information in their possession on this subject.

### Article 3

Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members -

- (a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and
- (b) against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions,

in order to prevent and to eliminate the abuses referred to in Article 2 of this Convention.

### Article 4

In particular, Members shall take such measures as are necessary, at the national and the international level, for systematic contact and exchange of information on the subject with other States, in consultation with representative organisations of employers and workers.

### Article 5

One of the purposes of the measures taken under Articles 3 and 4 of this Convention shall be that the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities.

14. (1) The technical selection of migrants for employment should be carried out in such a way as to restrict migration as little as possible while ensuring that the migrants are qualified to perform the required work.

(2) Responsibility for such selection should be entrusted -

(a) to official bodies; or

(b) where appropriate, to private bodies of the territory of immigration duly authorised and, where necessary in the interest of the migrant, supervised by the competent authority of the territory of emigration.

(3) The right to engage in selection should be subject to the prior authorisation of the competent authority of the territory where the said operation takes place, in such cases and under such conditions as may be prescribed by the laws and regulations of that territory, or by agreement between the government of the territory of emigration and the government of the territory of immigration.

(4) As far as possible, intending migrants for employment should, before their departure from the territory of emigration, be examined for purposes of occupational and medical selection by a representative of the competent authority of the territory of immigration.

(5) If recruitment takes place on a sufficiently large scale there should be arrangements for close liaison and consultation between the competent authorities of the territories of emigration and immigration concerned.

(6) The operations referred to in the preceding subparagraphs of this Paragraph should be carried out as near as possible to the place where the intending migrant is recruited.

15. (1) Provision should be made by agreement for authorisation to be granted for a migrant for employment introduced on a permanent basis to be accompanied or joined by the members of his family.

(2) The movement of the members of the family of such a migrant authorised to accompany or join him should be specially facilitated by both the country of emigration and the country of immigration.

(3) For the purposes of this Paragraph, the members of the family of a migrant for employment should include his wife and minor children; favourable consideration should be given to requests for the inclusion of other members of the family dependent upon the migrant.

V

16. (1) Migrants for employment authorised to reside in a territory and the members of their families authorised to accompany or join them should as far as possible be admitted to employment in the same conditions as nationals.

(2) In countries in which the employment of migrants is subject to restrictions, these restrictions should as far as possible -

### Article 2

1. Each Member for which this Convention is in force shall systematically seek to determine whether there are illegally employed migrant workers on its territory and whether there depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations.

2. The representative organisations of employers and workers shall be fully consulted and enabled to furnish any information in their possession on this subject.

### Article 3

Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members -

- (a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and
- (b) against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions,

in order to prevent and to eliminate the abuses referred to in Article 2 of this Convention.

### Article 4

In particular, Members shall take such measures as are necessary, at the national and the international level, for systematic contact and exchange of information on the subject with other States, in consultation with representative organisations of employers and workers.

### Article 5

One of the purposes of the measures taken under Articles 3 and 4 of this Convention shall be that the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities.

---

Article 6

1. Provision shall be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for the definition and the application of administrative, civil and penal sanctions, which include imprisonment in their range, in respect of the illegal employment of migrant workers, in respect of the organisation of movements of migrants for employment defined as involving the abuses referred to in Article 2 of this Convention, and in respect of knowing assistance to such movements, whether for profit or otherwise.

2. Where an employer is prosecuted by virtue of the provision made in pursuance of this Article, he shall have the right to furnish proof of his good faith.

Article 7

The representative organisations of employers and workers shall be consulted in regard to the laws and regulations and other measures provided for in this Convention and designed to prevent and eliminate the abuses referred to above, and the possibility of their taking initiatives for this purpose shall be recognised.

Article 8

1. On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit.

2. Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.

Article 9

1. Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.

2. In case of dispute about the rights referred to in the preceding paragraph, the worker shall have the possibility of presenting his case to a competent body, either himself or through a representative.

territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract;

- (b) after appropriate consultation with the representative organisations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas;
- (c) restrict access to limited categories of employment or functions where this is necessary in the interests of the State.

### PART III. FINAL PROVISIONS

#### Article 15

This Convention does not prevent Members from concluding multilateral or bilateral agreements with a view to resolving problems arising from its application.

#### Article 16

1. Any Member which ratifies this Convention may, by a declaration appended to its ratification, exclude either Part I or Part II from its acceptance of the Convention.
2. Any Member which has made such a declaration may at any time cancel that declaration by a subsequent declaration.

#### Migrant Workers Recommendation, 1975 (No. 151)

1. Members should apply the provisions of this Recommendation within the framework of a coherent policy on international migration for employment. That policy should be based upon the economic and social needs of both countries of origin and countries of employment; it should take account not only of short-term manpower needs and resources but also of the long-term social and economic consequences of migration for migrants as well as for the communities concerned.

### I. EQUALITY OF OPPORTUNITY AND TREATMENT

2. Migrant workers and members of their families lawfully within the territory of a Member should enjoy effective equality of opportunity and treatment with nationals of the Member concerned in respect of -

- (a) access to vocational guidance and placement services;

---

Article 6

1. Provision shall be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for the definition and the application of administrative, civil and penal sanctions, which include imprisonment in their range, in respect of the illegal employment of migrant workers, in respect of the organisation of movements of migrants for employment defined as involving the abuses referred to in Article 2 of this Convention, and in respect of knowing assistance to such movements, whether for profit or otherwise.

2. Where an employer is prosecuted by virtue of the provision made in pursuance of this Article, he shall have the right to furnish proof of his good faith.

Article 7

The representative organisations of employers and workers shall be consulted in regard to the laws and regulations and other measures provided for in this Convention and designed to prevent and eliminate the abuses referred to above, and the possibility of their taking initiatives for this purpose shall be recognised.

Article 8

1. On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit.

2. Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.

Article 9

1. Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.

2. In case of dispute about the rights referred to in the preceding paragraph, the worker shall have the possibility of presenting his case to a competent body, either himself or through a representative.



territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract;

- (b) after appropriate consultation with the representative organisations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas;
- (c) restrict access to limited categories of employment or functions where this is necessary in the interests of the State.

### PART III. FINAL PROVISIONS

#### Article 15

This Convention does not prevent Members from concluding multilateral or bilateral agreements with a view to resolving problems arising from its application.

#### Article 16

1. Any Member which ratifies this Convention may, by a declaration appended to its ratification, exclude either Part I or Part II from its acceptance of the Convention.

2. Any Member which has made such a declaration may at any time cancel that declaration by a subsequent declaration.

#### Migrant Workers Recommendation, 1975 (No. 151)

1. Members should apply the provisions of this Recommendation within the framework of a coherent policy on international migration for employment. That policy should be based upon the economic and social needs of both countries of origin and countries of employment; it should take account not only of short-term manpower needs and resources but also of the long-term social and economic consequences of migration for migrants as well as for the communities concerned.

### I. EQUALITY OF OPPORTUNITY AND TREATMENT

2. Migrant workers and members of their families lawfully within the territory of a Member should enjoy effective equality of opportunity and treatment with nationals of the Member concerned in respect of -

- (a) access to vocational guidance and placement services;

- 
- (b) access to vocational training and employment of their own choice on the basis of individual suitability for such training or employment, account being taken of qualifications acquired outside the territory of and in the country of employment;
  - (c) advancement in accordance with their individual character, experience, ability and diligence;
  - (d) security of employment, the provision of alternative employment, relief work and retraining;
  - (e) remuneration for work of equal value;
  - (f) conditions of work, including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment;
  - (g) membership of trade unions, exercise of trade union rights and eligibility for office in trade unions and in labour-management relations bodies, including bodies representing workers in undertakings;
  - (h) rights of full membership in any form of co-operative;
  - (i) conditions of life, including housing and the benefits of social services and educational and health facilities.

3. Each Member should ensure the application of the principles set forth in Paragraph 2 of this Recommendation in all activities under the control of a public authority and promote its observance in all other activities by methods appropriate to national conditions and practice.

4. Appropriate measures should be taken, with the collaboration of employers' and workers' organisations and other bodies concerned, with a view to -

- (a) fostering public understanding and acceptance of the above-mentioned principles;
- (b) examining complaints that these principles are not being observed and securing the correction, by conciliation or other appropriate means, of any practices regarded as in conflict therewith.

5. Each Member should ensure that national laws and regulations concerning residence in its territory are so applied that the lawful exercise of rights enjoyed in pursuance of these principles cannot be the reason for non-renewal of a residence permit or for expulsion and is not inhibited by the threat of such measures.

6. A Member may -

- (a) make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract;

- (b) after appropriate consultation with the representative organisations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas;
- (c) restrict access to limited categories of employment or functions where this is necessary in the interests of the State.

7. (1) In order to enable migrant workers and their families to take full advantage of their rights and opportunities in employment and occupation, such measures as may be necessary should be taken, in consultation with the representative organisations of employers and workers -

- (a) to inform them, as far as possible in their mother tongue or, if that is not possible, in a language with which they are familiar, of their rights under national law and practice as regards the matters dealt with in Paragraph 2 of this Recommendation;
- (b) to advance their knowledge of the language or languages of the country of employment, as far as possible during paid time;
- (c) generally, to promote their adaptation to the society of the country of employment and to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue.

(2) Where agreements concerning the collective recruitment of workers have been concluded between Members, they should jointly take the necessary measures before the migrants' departure from their country of origin to introduce them to the language of the country of employment and also to its economic, social and cultural environment.

8. (1) Without prejudice to measures designed to ensure that migrant workers and their families enter national territory and are admitted to employment in conformity with the relevant laws and regulations, a decision should be taken as soon as possible in cases in which these laws and regulations have not been respected so that the migrant worker should know whether his position can be regularised or not.

(2) Migrant workers whose position has been regularised should benefit from all rights which, in accordance with Paragraph 2 of this Recommendation, are provided for migrant workers lawfully within the territory of a Member.

(3) Migrant workers whose position has not been or could not be regularised should enjoy equality of treatment for themselves and their families in respect of rights arising out of present and past employment as regards remuneration, social security and other benefits as well as regards trade union membership and exercise of trade union rights.

(4) In case of dispute about the rights referred to in the preceding subparagraphs, the worker should have the possibility of presenting his case to a competent body, either himself or through a representative.

(5) In case of expulsion of the worker or his family, the cost should not be borne by them.

---

## II. SOCIAL POLICY

9. Each Member should, in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment.

10. With a view to making the policy as responsive as possible to the real needs of migrant workers and their families, it should be based, in particular, on an examination not only of conditions in the territory of the Member but also of those in the countries of origin of the migrants.

11. The policy should take account of the need to spread the social cost of migration as widely and equitably as possible over the entire collectivity of the country of employment, and in particular over those who profit most from the work of migrants.

12. The policy should be periodically reviewed and evaluated and where necessary revised.

### A. Reunification of families

13. (1) All possible measures should be taken both by countries of employment and by countries of origin to facilitate the reunification of families of migrant workers as rapidly as possible. These measures should include, as necessary, national laws or regulations and bilateral and multilateral arrangements.

(2) A prerequisite for the reunification of families should be that the worker has, for his family, appropriate accommodation which meets the standards normally applicable to nationals of the country of employment.

14. Representatives of all concerned, and in particular of employers and workers, should be consulted on the measures to be adopted to facilitate the reunification of families and their co-operation sought in giving effect thereto.

15. For the purpose of the provisions of this Recommendation relating to the reunification of families, the family of the migrant worker should include the spouse and dependent children, father and mother.

16. With a view to facilitating the reunification of families as quickly as possible in accordance with Paragraph 13 of this Recommendation, each Member should take full account of the needs of migrant workers and their families in particular in its policy regarding the construction of family housing, assistance in obtaining this housing and the development of appropriate reception services.

17. Where a migrant worker who has been employed for at least one year in a country of employment cannot be joined by his family in that country, he should be entitled -

- (a) to visit the country of residence of his family during the paid annual holiday to which he is entitled under the national law and practice of the country of employment without losing during the absence from that country any acquired rights or rights in course of acquisition and, particularly, without having his employment terminated or his right to residence in the country of employment withdrawn during that period; or
- (b) to be visited by his family for a period corresponding at least to the annual holiday with pay to which he is entitled.

18. Consideration should be given to the possibility of giving the migrant worker financial assistance towards the cost of the travel envisaged in the preceding Paragraph or a reduction in the normal cost of transport, for instance by the arrangement of group travel.

19. Without prejudice to more favourable provisions which may be applicable to them, persons admitted in pursuance of international arrangements for free movement of labour should have the benefit of the measures provided for in Paragraphs 13 to 18 of this Recommendation.

#### B. Protection of the health of migrant workers

20. All appropriate measures should be taken to prevent any special health risk to which migrant workers may be exposed.

21. (1) Every effort should be made to ensure that migrant workers receive training and instruction in occupational safety and occupational hygiene in connection with their practical training or other work preparation and, as far as possible, as part thereof.

(2) In addition, a migrant worker should, during paid working hours and immediately after beginning his employment, be provided with sufficient information in his mother tongue or, if that is not possible, in a language with which he is familiar, on the essential elements of laws and regulations and on provisions of collective agreements concerning the protection of workers and the prevention of accidents as well as on safety regulations and procedures particular to the nature of the work.

22. (1) Employers should take all possible measures so that migrant workers may fully understand instructions, warnings, symbols and other signs relating to safety and health hazards at work.

(2) Where, on account of the migrant workers' lack of familiarity with processes, language difficulties or other reasons, the training or instruction given to other workers is inadequate for them, special measures which ensure their full understanding should be taken.

(3) Members should have laws or regulations applying the principles set out in this Paragraph and provide that where employers or other persons or organisations having responsibility in this regard fail to observe such laws or regulations, administrative, civil and penal sanctions might be imposed.

### C. Social services

23. In accordance with the provisions of Paragraph 2 of this Recommendation, migrant workers and their families should benefit from the activities of social services and have access thereto under the same conditions as nationals of the country of employment.

24. In addition, social services should be provided which perform, in particular, the following functions in relation to migrant workers and their families -

- (a) giving migrant workers and their families every assistance in adapting to the economic, social and cultural environment of the country of employment;
- (b) helping migrant workers and their families to obtain information and advice from appropriate bodies, for instance by providing interpretation and translation services; to comply with administrative and other formalities; and to make full use of services and facilities provided in such fields as education, vocational training and language training, health services and social security, housing, transport and recreation: Provided that migrant workers and their families should as far as possible have the right to communicate with public authorities in the country of employment in their own language or in a language with which they are familiar, particularly in the context of legal assistance and court proceedings;
- (c) assisting authorities and bodies with responsibilities relating to the conditions of life and work of migrant workers and their families in identifying their needs and in adapting thereto;
- (d) giving the competent authorities information and, as appropriate, advice regarding the formulation, implementation and evaluation of social policy with respect to migrant workers;
- (e) providing information for fellow workers and foremen and supervisors about the situation and the problems of migrant workers.

25. (1) The social services referred to in Paragraph 24 of this Recommendation may be provided, as appropriate to national conditions and practice, by public authorities, by approved non-profit-making organisations or bodies, or by a combination of both. The public authorities should have the over-all responsibility of ensuring that these social services are at the disposal of migrant workers and their families.

(2) Full use should be made of services which are or can be provided by authorities, organisations and bodies serving the nationals of the country of employment, including employers' and workers' organisations.

26. Each Member should take such measures as may be necessary to ensure that sufficient resources and adequately trained staff are available for the social services referred to in Paragraph 24 of this Recommendation.

27. Each Member should promote co-operation and co-ordination between different social services on its territory and, as appropriate,

between these services and corresponding services in other countries, without, however, this co-operation and co-ordination relieving the States of their responsibilities in this field.

28. Each Member should organise and encourage the organisation, at the national, regional or local level, or as appropriate in a branch of economic activity employing substantial numbers of migrant workers, or periodic meetings for the exchange of information and experience. Consideration should also be given to the exchange of information and experience with other countries of employment as well as with the countries of origin of migrant workers.

29. Representatives of all concerned and in particular of employers and workers should be consulted on the organisation of the social services in question and their co-operation sought in achieving the purposes aimed at.

### III. EMPLOYMENT AND RESIDENCE

30. In pursuance of the provision of Paragraph 18 of the Migration for Employment Recommendation (Revised), 1949, that Members should, as far as possible, refrain from removing from their territory, on account of lack of means or the state of the employment market, a migrant worker regularly admitted thereto, the loss by such migrant worker of his employment should not in itself imply the withdrawal of his authorisation of residence.

31. A migrant who has lost his employment should be allowed sufficient time to find alternative employment, at least for a period corresponding to that during which he may be entitled to unemployment benefit; the authorisation of residence should be extended accordingly.

32. (1) A migrant worker who has lodged an appeal against the termination of his employment, under such procedures as may be available, should be allowed sufficient time to obtain a final decision thereon.

(2) If it is established that the termination of employment was not justified, the migrant worker should be entitled, on the same terms as national workers, to reinstatement, to compensation for loss of wages or of other payment which results from unjustified termination, or to access to a new job with a right to indemnification. If he is not reinstated, he should be allowed sufficient time to find alternative employment.

33. A migrant worker who is the object of an expulsion order should have a right of appeal before an administrative or judicial instance, according to conditions laid down in national laws or regulations. This appeal should stay the execution of the expulsion order, subject to the duly substantiated requirements of national security or public order. The migrant worker should have the same right to legal assistance as national workers and have the possibility of being assisted by an interpreter.

34. (1) A migrant worker who leaves the country of employment should be entitled, irrespective of the legality of his stay therein -

- 
- (a) to any outstanding remuneration for work performed, including severance payments normally due;
  - (b) to benefits which may be due in respect of any employment injury suffered;
  - (c) in accordance with national practice -
    - (i) to compensation in lieu of any holiday entitlement acquired but not used;
    - (ii) to reimbursement of any social security contributions which have not given and will not give rise to rights under national laws or regulations or international arrangements: Provided that where social security contributions do not permit entitlement to benefits, every effort should be made with a view to the conclusion of bilateral or multilateral agreements to protect the rights of migrants.

(2) Where any claim covered in subparagraph (1) of this Paragraph is in dispute, the worker should be able to have his interests represented before the competent body and enjoy equal treatment with national workers as regards legal assistance.



## APPENDIX II

## CHART OF RATIFICATIONS

Migration for Employment Convention (Revised), 1949 (No. 97) (Entry into force 22 January 1952) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (Entry into force 9 December 1978).

Date of Ratification up to 26 March 1980

<u>Countries</u>	<u>Convention No. 97</u>	<u>Convention No. 143</u>
Algeria	19.10.62 <sup>1</sup>	
Bahamas	25. 5.76 <sup>2</sup>	
Barbados	8. 5.67 <sup>2</sup>	
Belgium	27. 7.53	
Brazil	18. 6.65	
Cameroon, United Rep. of	3. 9.62 <sup>2</sup>	4. 7.78
Cuba	29. 4.52	
Cyprus	23. 9.60 <sup>2</sup>	28. 6.77
Ecuador	5. 4.78 <sup>2</sup>	
France	29. 3.54 <sup>1</sup>	
Germany (Federal Rep. of)	22. 6.59	
Grenada	9. 7.79 <sup>2</sup>	
Guatemala	13. 2.52	
Guinea		5. 6.78
Guyana	8. 6.66 <sup>2</sup>	
Israel	30. 3.53	
Italy	22.10.52	
Jamaica	26.12.62 <sup>2</sup>	
Kenya	30.11.65 <sup>2</sup>	9. 4.79
Malawi	22. 3.65	
Malaysia:		
Sabah	3. 3.64 <sup>2</sup>	
Mauritius	2.12.69 <sup>2</sup>	
Netherlands	20. 5.52	
New Zealand	10.11.50 <sup>3</sup>	
Nigeria	17.10.60 <sup>2</sup>	
Norway	17. 2.55	24. 1.79 <sup>6</sup>
Portugal	12.12.78	12.12.78
Spain	21. 3.67	
Tanzania:		
Zanzibar	22. 6.64 <sup>2</sup>	
Trinidad and Tobago	24. 5.63 <sup>2</sup>	
Uganda		31. 3.78
United Kingdom	22. 1.51 <sup>4</sup>	
Upper Volta	9. 6.61	9.12.77
Uruguay	18. 3.54	
Yugoslavia	4.12.68 <sup>5</sup>	
Zambia	2.12.64 <sup>2</sup>	

<sup>1</sup> Excluding Annex II.

<sup>2</sup> Excluding Annexes I-III.

<sup>3</sup> Excluding Annex I.

<sup>4</sup> Excluding Annexes I and III.

<sup>5</sup> Excluding Annex III.

<sup>6</sup> Part I not included.

## APPENDIX III

## INFORMATION AVAILABLE

Countries	Convention No. 97		Rec. 86	Convention No. 143		Rec. 151
	Art. 22 <sup>1</sup>	Art. 19 <sup>2</sup>	Art. 19	Art. 22	Art. 19 <sup>2</sup>	Art. 19
Afghanistan		-	-	-	-	-
Algeria	X		-	-	-	-
Angola		-	-	-	-	-
Argentina		X	X	X	X	X
Australia *		X	X	X		-
Austria		X	X	X		X
Bahamas	X		-	-	-	-
Bahrain *		X	X	X		X
Bangladesh		-	-	-	-	-
Barbados	X		-	-	-	-
Belgium	X		-	X		X
Benin		X	X	X		X
Bolivia		X	X	X		X
Botswana		X	-	X		-
Brazil	X		X	X		X
Bulgaria *		X	X	X		X
Burma		-	-	-	-	-
Burundi		-	-	-	-	-
Byelorussian SSR		X	X	X		X
Cameroon, United Rep. of	X		X	3		X
Canada *		X	X	X		X
Central African Rep.		-	-	-	-	-
Chad		-	-	-	-	-
Chile *		X	X	X		X
Colombia		X	X	X		X
Comoros		-	-	-	-	-
Congo		X	X	X		X
Costa Rica		-	-	-	-	-
Cuba	X		X	X		X
Cyprus	X		X	X		X
Czechoslovakia		X	X	X		X
Democratic Yemen *		X	X	X		X

Countries	Convention No. 97		Rec. 86	Convention No. 143		Rec. 151
	Art. 22 <sup>1</sup>	Art. 19 <sup>2</sup>	Art. 19	Art. 22	Art. 19 <sup>2</sup>	Art. 19
Denmark		-	-		-	-
Djibouti		-	-		-	-
Dominican Republic		X	-		X	-
Ecuador	3		-		-	-
Egypt		X	X		X	X
El Salvador		X	-		-	-
Ethiopia*		X	X		X	X
Fiji		X	X		X	X
Finland		X	X		X	X
France	X		X		X	X
Gabon		X	-		-	-
German Democratic Rep.		X	X		X	X
Germany (Federal Rep. of)	X		X		X	X
Ghana		-	-		-	-
Greece*		X <sup>6</sup>	X <sup>6</sup>		X <sup>6</sup>	X <sup>6</sup>
Guatemala*	X		X		X	X
Guinea		-	-	3		-
Guinea-Bissau		-	-		-	-
Guyana	X		X		X	X
Haiti*		-	X		X	X
Honduras		-	-		-	-
Hungary		X	X		X	X
Iceland		-	-		-	-
India		X	X		X	X
Indonesia*		X	X		X	X
Iran		-	-		-	-
Iraq		-	-		-	-
Ireland		-	-		-	-
Israel*	X		X <sup>6</sup>		X <sup>6</sup>	X <sup>6</sup>
Italy*	X		-		X	-
Ivory Coast		-	-		-	-
Jamaica*	X		X		X	X
Japan		X	X		X	X
Jordan*		X	X		X	X

Countries	Convention No. 97		Rec. 86	Convention No. 143		Rec. 151
	Art. 22 <sup>1</sup>	Art. 19 <sup>2</sup>	Art. 19	Art. 22	Art. 19 <sup>2</sup>	Art. 19
Kenya	X		-	3		-
Kuwait		X	X		X	X
Lao Republic		-	-		-	-
Lebanon		X	X		X	X
Liberia*		X <sup>6</sup>	X <sup>6</sup>		X <sup>6</sup>	X <sup>6</sup>
Libyan Arab Jamahiriya		-	-		-	-
Luxembourg		X	X		X	X
Madagascar		-	X		-	-
Malawi	X		-		-	-
Malaysia <sup>4</sup>	X	X	X		X	X
Mali		X	X		X	X
Malta		X	X		X	X
Mauritania		-	-		-	-
Mauritius	X		X		X	X
Mexico		X	X		X	X
Mongolia		X	X		X	X
Morocco		X	X		X	X
Mozambique		-	-		-	-
Namibia		-	-		-	-
Nepal		-	-		-	-
Netherlands	X		X		X	X
New Zealand	X		-		-	-
Nicaragua		-	-		-	-
Niger		X	-		X	-
Nigeria	X		X		X	X
Norway	X		X	3	X	X
Pakistan		X	X		X	X
Panama		X	X		X	X
Papua New Guinea		-	-		-	-
Paraguay*		X	-		X	-
Peru		X	X		X	X
Philippines		-	-		X	-
Poland		X	X		X	X
Portugal	X		X	X		X
Qatar		-	-		-	-
Romania		X	X		X	X
Rwanda		X	X		X	X

Countries	Convention No. 97		Rec. 86	Convention No. 143		Rec. 151
	Art. 22 <sup>1</sup>	Art. 19 <sup>2</sup>	Art. 19	Art. 22	Art. 19 <sup>2</sup>	Art. 19
Saudi Arabia *		X	X		X	X
Senegal		X	X		X	X
Seychelles		-	-		-	-
Sierra Leone		X	X		X	X
Singapore		X	X		X	X
Somalia *		-	-		X	-
Spain	X		X		X	X
Sri Lanka		X	X		X	X
Sudan		X	X		X	X
Suriname		-	-		X	-
Swaziland		X	X		X	X
Sweden		X	X		X	X
Switzerland		X	X		X	X
Syrian Arab Republic *		X	X		X	X
Tanzania <sup>5</sup>		X	-		X	X
Thailand		-	-		-	-
Togo		-	-		-	-
Trinidad and Tobago	X		-		-	-
Tunisia *		X	X		X	X
Turkey		X	X		X	X
Uganda		-	-	3		-
Ukrainian SSR		X	X		X	X
USSR		X	X		X	X
United Arab Emirates		-	-		-	-
United Kingdom	X		X		X	X
Upper Volta	X		-	-		-
Uruguay	X		X		X	X
Venezuela		X	X		X	X
Yemen		-	-		-	-
Yugoslavia	X		-		-	-
Zaire		-	-		-	-
Zambia	X		-		X	-

---

Note: A total of 19 reports has also been received in respect of the following non-metropolitan territories: United Kingdom (Brunei, Gibraltar, Guernsey, Hong Kong, Isle of Man, Montserrat, St. Kitts).

<sup>1</sup> Report supplied for at least one of the last two reference periods, in application of article 22 of the ILO Constitution by States which have ratified the Convention.

<sup>2</sup> Reports supplied in application of article 19 of the ILO Constitution by States which have not ratified the Convention, or which have ratified the Convention recently and thus are not yet obliged to submit a report under article 22.

<sup>3</sup> Countries from which a report, in application of article 22, was not due as the ratification was registered recently.

<sup>4</sup> The Federation of Malaysia has ratified Convention No. 97 only as regards the State of Sabah.

<sup>5</sup> Tanzania has ratified Convention No. 97 only as regards Zanzibar.

<sup>6</sup> Reports received too late to be examined.

X = Report received.

\* = Report received too late to be summarised in Report III (Part 2).

- = Report not received under articles 19 or 22 of the ILO Constitution.

---