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Preface

Multinational enterprises form an important nexus linking Africa's economies to global markets. Kenya presents a dynamic example of the potential of MNEs to generate multiplier effects as sources of foreign exchange, employment, and technological and managerial know-how. Kenya has recently experienced a surge in foreign direct investment (FDI) following a period of substantial declines in FDI inflows near the turn of the century. With a rejuvenated public policy to liberalize the economy and to encourage foreign investment, the role of MNEs in the plantation and other sectors of the Kenyan economy is bound to increase. Already, there is evidence that MNEs that were hitherto identified with one subsector of plantation crops have diversified and shown interest more broadly in, for example, horticultural farming.

Despite optimistic forecasts for economic growth in East Africa's largest economy, the integration of Kenya, and indeed its African neighbours, into the global economy cannot be achieved if the standards for social and economic benefits to be gained from foreign investment are less favourable than those which obtain elsewhere. The universality of human rights and decent work values help encourage a minimum threshold of responsible conduct, in the workplace and in the community, for companies and their stakeholders operating across borders in global markets.

The Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) can help achieve this by providing consistent expectations and a standard measure of performance for companies, governments, and workers' and employers' organizations involved in MNE operations. The MNE Declaration provides global guidelines for MNE operations that have been agreed by government, business and labour to promote socially sustainable development, human rights in the workplace, vocational training for employability, good working conditions, and sound industrial relations.

This report presents a stock-taking of the contributions provided, and challenges faced, by MNEs operating in the plantations sector in Kenya. By seeking to draw a fair picture through consultations with the key actors concerned and visits to estates, it is our intent that this report help cultivate and strengthen the process of dialogue among MNEs, the Government, and the social partners already under way in the country. We express our deep gratitude to all who made this report possible, in particular, to Mr. Geoff Orao-Obura who played a most valuable and essential role in the research and drafting of this report, as well as to the Government and social partners, and to the MNEs themselves who graciously opened their gates and offices to our research team.

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Executive summary

This study examines policies and practices with regard to industrial relations, employment and working and living conditions in multinational enterprises (MNEs) which own or operate plantations in Kenya in light of the principles and recommendations contained in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). Its aim is to highlight the positive contributions made by MNEs to Kenya's social and economic development and to suggest areas where further progress might be pursued.

Agriculture dominates the Kenyan economy, contributing one-quarter of its GDP and almost 60 per cent of total foreign exchange earnings. Plantation agriculture is one of the sectors which attracts the highest level of foreign investment. MNE plantations play an important role in the growth and processing of the agricultural export crops on which the economy relies and thus form an important nexus linking the Kenyan economy to the global market. Their activities also generate important multiplier effects throughout the domestic economy through the commercial relations they maintain with local firms and the direct and indirect employment they generate, particularly in rural areas. Through their extensive welfare activities, MNE plantations contribute to the improvement of rural living standards, the promotion of social welfare and the satisfaction of basic needs.

The working and living conditions of plantation workers are inseparable; most of the permanent workforce reside on the plantation where they are employed. Considerations with regard to workers' health, safety and well-being therefore go beyond the field and factory to include the home and the services provided for workers and their families. Because plantations are far better organized than the rest of the agricultural industry, the wages and terms of service set through collective bargaining have tended to be more favourable than what obtains in the rest of the agricultural sector. Working conditions in live-in MNE plantations were generally considered to be better than those in other plantations, as were housing facilities. Due to the hazardous nature of agricultural occupations and the often remote location of plantations, medical care is a critical employment benefit for plantation workers. MNE plantations provide basic health care in the clinics on their estates, and in some cases extend care to family members as well. Some provide direct support to hospitals in the nearby community. One health issue of overarching importance to the Kenyan population as a whole is HIV/AIDS. On several MNE estates, management has taken a proactive approach, raising awareness not only among employees, but in the surrounding community as well. The provision of educational facilities for their children is considered part of the welfare package for plantation employees. In MNE plantations, schools are comparatively well developed and equipped. MNE employers were highly sensitized to the issue of child labour. Indeed, all MNEs visited had a clear policy against child labour.

The report concludes by noting areas of contributions and challenges for MNE plantations and their stakeholders in using the partnership approaches of the MNE Declaration to maximize outcomes in line with the aims of the Declaration.

1. Introduction

In 1994, the ILO Committee on Work on Plantations adopted a resolution requesting that a study be done to shed light on the role of multinational enterprises in the plantation sector in light of the newly emerging forms of production linked to foreign investment in agriculture and plantations. As a response to this request and to the rapidly changing economic developments in the sector, research was undertaken on the basis of available information sources, interviews of representatives of government, employers and workers' organizations and a number of on-site visits to companies owned or managed by multinational enterprises (MNEs) operating in the plantation sector in Kenya. This study examines private and public sector policies and practices with regard to employment, working conditions (including occupational safety and health) and industrial relations in plantations in Kenya in light of the principles and recommendations contained in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration).

For purposes of this study, "plantations" are defined in accordance with the ILO Plantations Convention, 1958 (No. 110),¹ which states that:

The term "plantation" includes any agricultural undertaking regularly employing hired workers which is situated in the tropical or subtropical regions and which is mainly concerned with the cultivation or production for commercial purposes of coffee, tea, sugar cane, rubber, bananas, cocoa, coconuts, groundnuts, cotton, tobacco, fibres (sisal, jute, hemp), citrus, palm oil, cinchona or pineapple; it does not include family or small-scale holdings producing for local consumption and not regularly employing hired workers.

Plantation agriculture thus has three basic characteristics: it regularly employs hired workers; it is located in tropical or subtropical regions; and crops are cultivated for commercial purposes. The term "plantation" also includes services carrying out the primary processing of the product or products of the plantation. The crops listed in the Plantations Convention are non-indigenous to Kenya. They are grown both in small-scale holdings and in large-scale farms and are intended for the world market. This paper concerns itself only with the large-scale production of plantation crops.

"Multinational enterprises" (MNEs) are defined with reference to the working definition used in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted by the Governing Body of the International Labour Office in 1977. That Declaration states that:

Multinational enterprises include enterprises, whether they are of public, mixed or private ownership, which own or control production, distribution, services or other facilities outside the country in which they are based. The degree of autonomy of entities within multinational enterprises in relation to each other varies widely from one such enterprise to another, depending on the nature of the links between such entities and their fields of activity and having regard to the great diversity in the form of ownership, in the size, in the nature and location of the operations of the enterprises concerned.

¹ While ILO Plantations Convention, 1958 (No. 110) is the relevant international labour standard concerning the conditions of employment of plantation workers, it should be borne in mind that Kenya has not ratified Convention No. 110. Nonetheless, the voluntary principles of the MNE Declaration apply to governments, workers, employers, and MNEs in all ILO member States regardless of ratifications.

For purposes of this paper, multinational enterprises are therefore deemed to be those large firms owned or controlled by corporate entities outside Kenya engaged in plantation farming, as defined in the ILO Plantations Convention, 1958 (No. 110).

2. Foreign direct investment in Africa: Multinational enterprises and the plantation sector in Kenya

Multinational enterprises form an important nexus linking the Kenyan economy to the global market. MNEs bring investment, technology, managerial know-how and organizational skills to complement the domestic resources of their host country and, through their extensive commercial networks, MNEs sell local production to customers overseas. MNE plantations contribute immensely to the domestic Kenyan economy. They provide a vital source of foreign exchange, employment in rural areas and raw material for industrial development. Their activities generate important multiplier effects at their various locations. Through the creation of direct and indirect employment as well as through their often extensive welfare activities, they contribute to the improvement of rural living standards, the promotion of social welfare and the satisfaction of basic needs.

2.1. Kenya and FDI flows

In 1999, Kenya was host to 96 foreign affiliates, placing it sixth among African countries in the number of overseas firms operating in the country.² However, with an estimated US\$60 million in foreign direct investment (FDI)³ inflows in 2000, Kenya ranked 15th among sub-Saharan nations in terms of the level of investment received.⁴ In global terms, Kenya's share in FDI inflows is small. It accounted for less than 1 per cent of the African total in 2000, which itself was less than 1 per cent of global FDI inflows.⁵

FDI inflows into Kenya have grown moderately over the years, averaging less than 10 per cent growth per annum between 1986 and 2000.⁶ That growth was considerably lower than the five-fold increase in inward investment in the East African region⁷ where FDI totalled less than US\$500 million in the period 1987-92, but rose to over

² UNCTAD: *World Investment Report 2001: Promoting Linkages* (Geneva, 2001), p. 239.

³ For purposes of this report, FDI is "an investment involving a long-term relationship and reflecting a lasting interest and control of a resident entity in one economy (foreign direct investor or parent enterprise) in an enterprise resident in an economy other than that of the foreign direct investor (FDI enterprise or affiliate enterprise or foreign affiliate). FDI implies that the investor exerts a significant degree of influence on the management of the enterprise resident in the other economy. Such investment involves both the initial transaction between the two entities and all subsequent transactions between them and among foreign affiliates, both incorporated and unincorporated. FDI may be undertaken by individuals as well as business entities." UNCTAD, *op. cit.*, p. 275.

⁴ *ibid.*, p. 292.

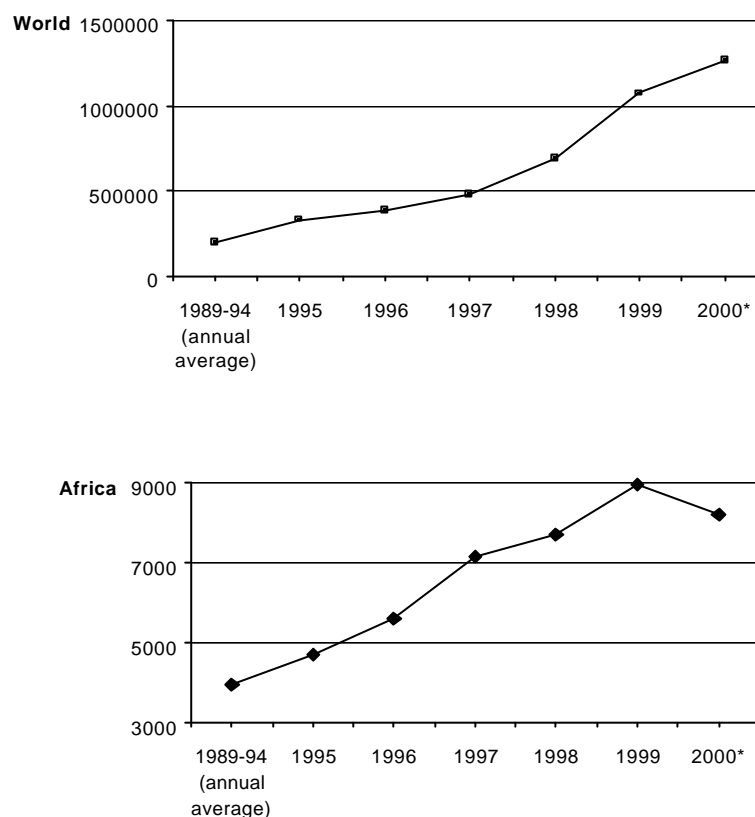
⁵ *ibid.*, p. 19.

⁶ This modest growth is contrasted with annual averages of more than 30 per cent growth in FDI achieved by some 65 countries around the world for the same period, and rates of 20 to 29 per cent attained by 29 others, *ibid.*, p. 10.

⁷ Comparisons are based on the data from the following East African countries: Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Madagascar, Mauritius, Seychelles, Somalia, United Republic of Tanzania and Uganda.

US\$2.6 billion in the period 1993-98.⁸ However, whereas overall FDI inflow into Africa declined markedly from 1999 to 2000,⁹ in the case of Kenya, FDI inflow rose 43 per cent from US\$42 million in 1999 to an estimated US\$60 million in 2000. Indeed, total estimated FDI to Kenya in 2000 is three times the average annual net FDI of US\$20 million attained by that country during the period 1990-98.¹⁰ (See figures 2.1 and 2.2.)

Figure 2.1. FDI inflows 1989-2000 (millions of dollars)



* Estimated.

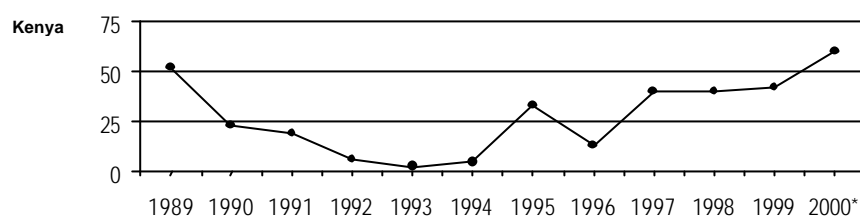
Source: UNCTAD: *World Investment Report 2001*, p. 291.

⁸ African Development Bank: *African Development Report 2000: Regional Integration in Africa* (Abidjan, 2000), p. 63.

⁹ This decline was accounted for principally by drops in inflows to Angola, Mozambique and South Africa. UNCTAD, op. cit., pp. 19, 20 and 292.

¹⁰ World Bank: *African Development Indicators 2000* (Washington DC, 2000), p. 245.

Figure 2.2. Net foreign direct investment in Kenya, 1980-2000 (millions of dollars)



* Estimated.

Source: World Bank: *African Development Indicators*, 2000, p. 82.

Kenya is the largest economy in East Africa, but the economy has slowed since the mid-1990s¹¹ due to a number of factors, including deteriorating infrastructure, telecommunications, labour unrest, and loss of investor confidence. Factors that contributed to poor sectoral performance included bad weather and declining world commodity prices accompanied by a high degree of volatility. Recent economic reforms appear to be reviving investor confidence, as attested to by the surge in FDI in 2000.¹² Plantation agriculture was one of the three main sectors to attract the highest level of foreign investment in 1998.¹³

2.2. Agriculture, exports and the Kenyan economy

Agriculture dominates the Kenyan economy in terms of its share of GDP, its contribution to export earnings and the number of persons it employs. Agriculture contributes 24.5 per cent of Kenya's Gross Domestic Product¹⁴ and generates almost 60 per cent of total foreign exchange earnings.¹⁵ Small-scale agriculture is the single largest source of employment in the country absorbing slightly over half of the labour force. The second largest is the plantation sector, which accounted for approximately one-sixth of the total labour force.

World prices of plantation crops are subject to wide swings, as the recent plunge in the price of coffee and the surge in the price of tea illustrate. When unfavourable, as with recent world coffee prices, such fluctuations hit the economy of the producer countries even harder if their export earnings are derived from a limited number of products. The

¹¹ Kenya's 1999 growth rate of 1.4 per cent was the lowest since 1993, and below the regional average of 4.4 per cent. *African Development Report, 2000*, op. cit., pp. 56-57. The growth rate in agricultural sector GDP decelerated from 1.2 per cent in 1999 to negative 2.4 per cent in 2000. Central Bureau of Statistics, Ministry of Finance and Planning: *Economic Survey 2001* (Nairobi, 2001), p. 116.

¹² Effective as of 1 January 2000, the corporate tax rate was reduced from 32.5 per cent to 30 per cent for resident companies and from 40 per cent to 37.5 per cent for foreign-based companies with branches in Kenya. *African Development Report 2000*, op. cit., pp. 63-64.

¹³ Economist Intelligence Unit: *Investing, Licensing and Trading in Kenya* (London, 2000), p. 7.

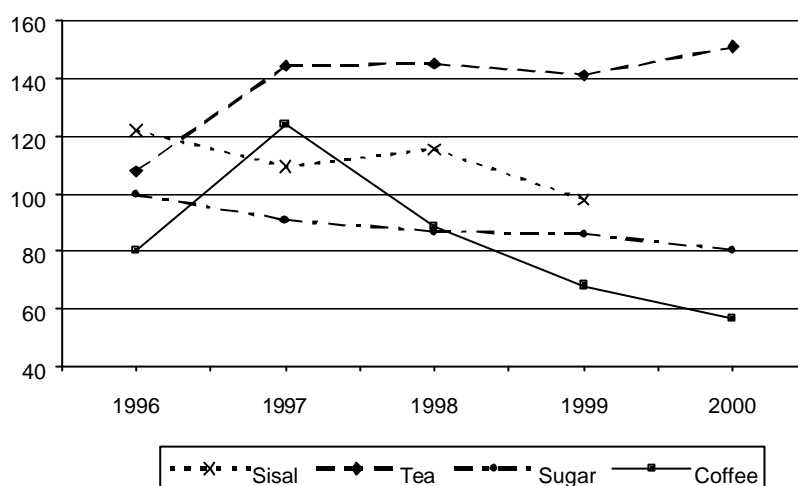
¹⁴ Central Bureau of Statistics, Ministry of Finance and Planning: *Statistical Abstract 2000* (Nairobi, 2001), p. 59.

¹⁵ *ibid.*, pp. 76-77.

encouragement of a varied horticultural subsector marks an attempt to diversify production in order to cushion the shock of sudden price falls. (See figure 2.3.)

The Kenyan economy is characterized by a heavy reliance on exports, most of which are primary agricultural products.¹⁶ Along with South Africa, Côte d'Ivoire and Zimbabwe, Kenya was among the top African exporters of agricultural products with exports valued at over US\$1 billion in 1997, far outstripping its nearest competitors, Morocco (with just over US\$800 million) and Ghana (with just over US\$600 million).¹⁷

Figure 2.3. Selected world commodity price indices, 1996-2000 (1995 = 100)



Source: Ministry of Finance and Planning: *Economic Survey 2001*, p. 14.

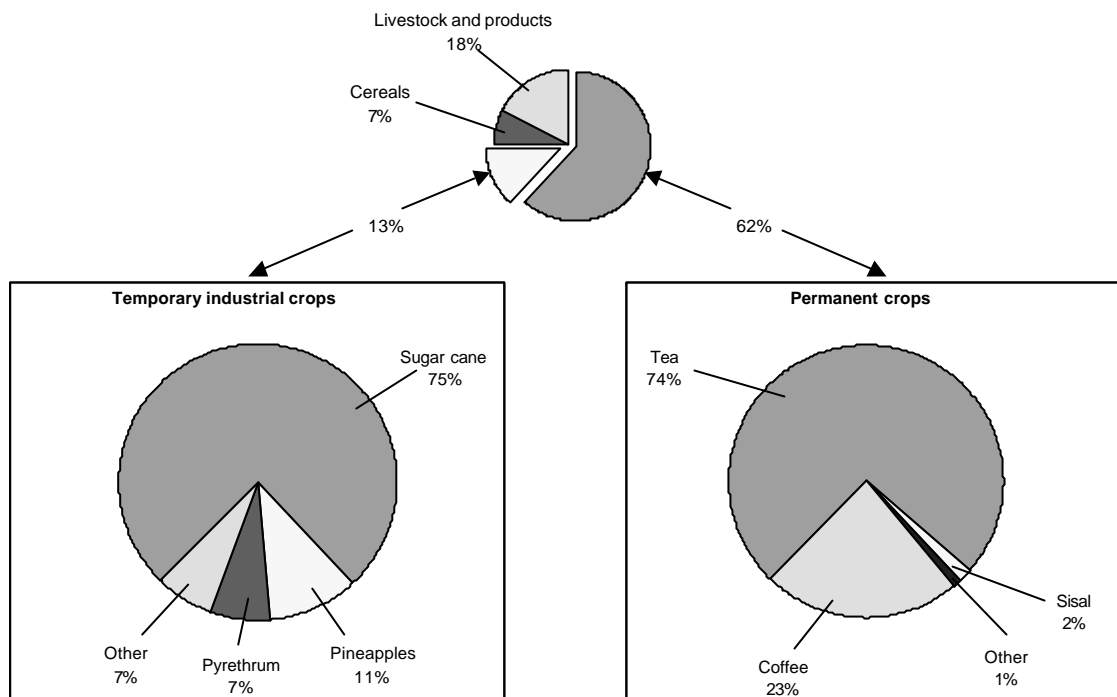
The top three agricultural commodities – tea, horticultural products, and coffee – accounted for more than half of Kenya's total exports in 2000. In recent years, horticultural produce, in particular cut flowers, has risen rapidly in terms of export earnings, and is now second only to tea in terms of value at export. Along with sugar, sisal and pyrethrum, these constitute the principal plantation crops destined for export. In terms of value, plantation crops accounted for the bulk of total recorded centrally marketed agricultural production. The six main crops under plantation management i.e. sugar cane, pineapples, pyrethrum, coffee, tea and sisal, had a total marketed production valued at Ksh57,856 million, or 73.5 per cent of the total of Ksh78,755 million in 2000.¹⁸ The importance of Kenya's main agricultural exports as a portion of total recorded marketed production is illustrated in figure 2.4.

¹⁶ More than 80 per cent of Africa's exports consist of commodities. The share of 28 non-oil primary commodities in total exports has been estimated at 75 per cent or above in 17 countries in sub-Saharan Africa. *World Investment Report 2001*, op. cit., pp. 27-28.

¹⁷ *African Development Indicators 2000*, op. cit., p. 245.

¹⁸ *Economic Survey 2001*, op. cit., p. 117.

Figure 2.4. Recorded marketed production, 2000* (KSh million)



* Estimated.

Source: *Economic Survey 2001*, p. 117.

MNEs actively participate in the plantation sector as owners and managers of plantations growing Kenya's major export crops. The importance of MNEs to the development of the country is demonstrated by their participation in terms of acreage under plantation, the number of employees who directly or indirectly earn their living from their operations, and their contribution to overall economic performance. Given the magnitude of the investment required to manage plantation estates, MNEs are a significant presence in the sector.

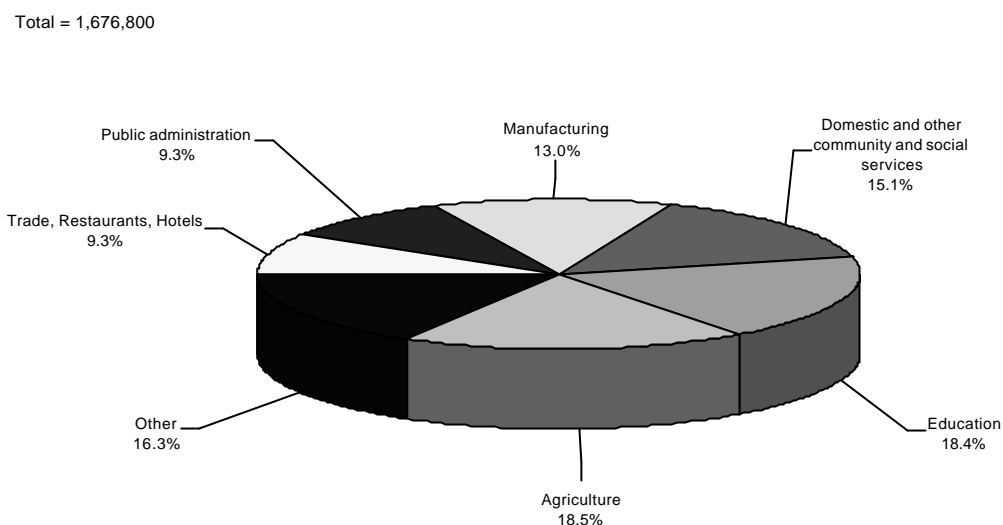
2.3. Employment and wage contributions in the agricultural sector

Agriculture and forestry, under which the plantation subsector falls,¹⁹ offered wage employment to 311,000 workers in the year 2000 out of a total regular waged workforce of 1,676,800 nationwide.²⁰ The importance of agriculture as a source of formal sector employment is evident in comparison with employment levels in other major sectors. (See figure 2.5.)

¹⁹ Plantations are classified under the agriculture and forestry subsectors in the industry classification in Kenya.

²⁰ *Economic Survey 2001*, op. cit., p. 51.

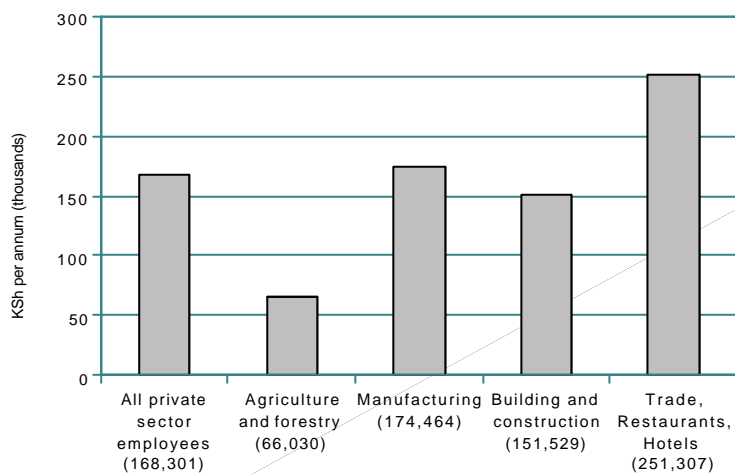
Figure 2.5. Wage employment by sector, 2000



Source: *Economic Survey 2001*, p. 51.

Agriculture and forestry contributed more than 8.1 per cent of the total wage earnings in 2000.²¹ However, wage earnings per employee in private sector agriculture and forestry were the lowest of any sector. At Ksh66,000 per annum in 2000, average wage earnings for employees in agriculture were less than 40 per cent of average earnings among private sector employees as a whole.²² (See figure 2.6.)

Figure 2.6. Average wage earnings per employee (private sector), 2000*



* Provisional

Source: *Economic Survey 2001*, p. 53.

²¹ *ibid.*, p. 52.

²² *ibid.*, p. 53.

Besides being the country's single greatest source of wage employment, agriculture also has strong forward and backward linkages with the manufacturing sector, providing most of the raw materials for local agro-industries and thus contributing indirectly to employment in that sector as well.

The bulk of MNE production is intended for world markets, where the quality of their products is a decisive factor in their ability to compete. Maintenance of product quality is a boon to Kenya's local industries. MNEs, as purchasers of services, supplies and raw materials on the domestic market, form a link between domestic firms and the international economy. These commercial relations with national suppliers of goods and services sustain indirect employment and help set standards of quality, productivity and price which in turn spur improvements up and down the supply chain. To give a typical example, an MNE plantation in the pineapple subsector based local purchase orders for spare machine parts, printing, pest control, catering, cleaning and other services on a tender system, ensuring that suppliers were able to comply with ISO 9000 and 9002 quality standards. Such arrangements sustained the high standard of quality products from Kenyan industries, and also enhanced the quantity of skilled manpower in the country. The local enterprises benefit from their enhanced capacities in terms of new product design, development, and marketing.²³

Another important linkage is evidenced in the stable, long-term commercial relations which MNEs maintain with outgrowers in the regions of their operations. For example, in the sugar subsector, there are two main types of sugar growers, namely, large company-owned plantations and smaller individually owned outgrower farms. Outgrowers are subcontracted by the sugar companies to grow cane; the MNE-owned factories process their farm produce (see box 2.1). Not only are they business partners, but MNEs also provide an important source of technical advice and inputs to the outgrowers. In the tea subsector, for example, MNEs invite smallholders to field days several times a year, where new, advanced techniques are demonstrated. When smallholder factories are running to capacity, they call on MNEs for assistance in tea processing.

Box 2.1

MNEs and outgrowers: A case from sugar plantations

One MNE visited employs 3,200 permanent employees on its own nucleus plantation, but buys in and processes sugar from a network of 65,000 outgrowers grouped under their own company. The two entities – the MNE and the outgrower network – are totally interdependent. The outgrower network provides the bulk of the sugar processed by the MNE and, besides processing the cane, the MNE provides a wide variety of support services to the outgrowers. These include technical advice, particularly on cane husbandry, the bulk purchase of fertilizer and its transport to each individual farm, assistance with plowing, and transport of harvested cane from the farm to the factory. Because cane husbandry is such a crucial element in quality assurance, the MNE's agronomists test the soils on outgrower farms and offer technical advice to enhance yields. The MNE-managed company also assumes important administrative responsibilities on behalf of the outgrower network, for example, payment of cane-cutters employed by the outgrowers out of proceeds payable to them for cane deliveries. This arrangement reduces the direct involvement of the MNE plantation in crop production per se, but for such a relationship to work efficiently, it also inherently involves the firm in the building and maintenance of infrastructure, such as roads and bridges, within the out-grower area in order to ensure the delivery of products and services.

²³ Note para. 20 of the MNE Declaration, which provides: "To promote employment in developing countries, in the context of an expanding world economy, multinational enterprises, wherever practicable, should give consideration to the conclusion of contracts with national enterprises for the manufacture of parts and equipment, to the use of local raw materials and to the progressive promotion of the local processing of raw materials. Such arrangements should not be used by multinational enterprises to avoid the responsibilities embodied in the principles of this Declaration."

2.4. MNEs and corporate social responsibility (CSR)

Large corporations are not only economic actors, but also members of a community. Their activities affect not only their commercial partners, shareholders and employees, but also the larger society. MNE plantations are no exception to this rule. A number of the MNE plantations visited incorporated social welfare considerations into their operations, incurring additional costs in order to undertake socially desirable action which went beyond the requirements of the law.

Because they are often located in remote areas and encompass large tracts of land, plantations have had to build and maintain much of the basic infrastructure, such as road networks, bridges, transport systems and water treatment plants, needed for their operations. To attract and retain the necessary workforce, plantation management has had to provide housing and welfare facilities and to ensure social services, such as education and health care, that would ordinarily be provided by the central government or respective local government authorities. While such undertakings may be viewed as a business necessity, the benefits often extend to the wider community. Indeed, the MNE plantations visited offered numerous examples of voluntary contributions to worthwhile community projects ranging from a local afforestation programme to the setting up of community-based police information centres.

The importance of these contributions was particularly evident in the field of medical care. All the plantations visited maintained dispensaries and clinics on their estates, but for more advanced treatment, most relied on local hospitals. In a number of cases, the MNE plantations contributed advanced medical equipment, pharmaceuticals, financial support or vital services, such as piped water, to hospitals in the nearby community. Some had undertaken major construction projects, building additional hospital wards or improving road access. One MNE plantation had set up a mother-child health unit, which provided a wide range of preventive health care not only to employees, but to local residents as well. Another had organized an HIV/AIDS awareness day offering information, counselling, and free voluntary testing open to the entire community.

A number of plantations allowed children from the surrounding area to attend the primary schools on their estates. Similarly, several MNE plantations supported local secondary schools with financial contributions as well as gifts in kind. Several offered scholarships to enable children to pursue a secondary education. These contributions to community welfare were highly appreciated by local residents and praised by several trade union representatives.

3. Observations regarding employment and working conditions in MNE operations in the Kenyan plantation sector

Plantations in Kenya employ a large portion of the country's labour force and most of the plantations are working-cum-resident units. Because of this, they attract considerable political attention as they form important voting blocs during parliamentary and presidential elections. The relatively strong labour movement in the sector has also ensured that the employment and working conditions in this sector are frequently the subject of public debate.

3.1. Industrial relations: Freedom of association, right to organize, and collective bargaining

Kenya's international obligation to respect, to promote and to realize freedom of association and the effective recognition of the right to collective bargaining is implemented through laws, policies and other appropriate measures.²⁴ All individuals in Kenya enjoy constitutional guarantees of freedom of association and the right to form or join trade unions.

The guiding policy document in the practice of industrial relations in Kenya is the Industrial Relations Charter. First introduced in 1962 on the eve of national independence and reviewed four times since then, the Charter is a voluntary agreement, formulated and signed by the three social partners. The Charter includes important principles embodied in international labour standards, such as the agreement of all sides to "respect each other's right to freedom of association". Clause 2 provides that no employee shall be compelled to become a member of a trade union and that no worker shall be penalized on account of trade union membership. The principle of one union per industry, the commitment to collective bargaining, the tripartite approach to dispute settlement as well as tripartite cooperation all derive their legitimacy mainly from the Industrial Relations Charter. In February 2001, the tripartite partners agreed to incorporate the Charter into the Labour Code and the issue is currently being addressed by the Task Force appointed in May 2001 to review all labour laws.²⁵

The Government of Kenya has reported that for the period 1996-99, MNEs generally observed standards of industrial relations which were not less favourable than those applied by comparable employers in the country. No particular industrial relations problems specific to MNEs existed. The set of industrial relations laws and practices are

²⁴ Although Kenya has not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). As a Member of the ILO, Kenya has agreed to respect the principles underlying these fundamental rights, in accordance with the ILO Declaration on Fundamental Principles and Rights at Work.

²⁵ Tayo Fashoyin: "Social dialogue and socio-economic development in Kenya" (Geneva, ILO, InFocus Programme on Strengthening Social Dialogue, 2001), pp. 15-16.

considered to be equally applicable to MNEs and local enterprises. There is no specific statute intended solely for labour relations in the plantation sector.²⁶

Like the other partners in the plantation sector, MNEs are subject to the general legislative statutes, which define conditions of employment and establish minimum standards for working conditions in the country. Such conditions are set out in the following Acts:

- The Employment Act, Chapter 226 of the Laws of Kenya, 1976, last revised 1984.
- Regulation of Wages and Conditions of Employment Act, Chapter 229 of the Laws of Kenya, 1951, last revised 1989.
- The Trade Disputes Act, Chapter 234 of the Laws of Kenya, 1965, last revised 1991.
- The Industrial Training Act, Chapter 237 of the Laws of Kenya, 1960, last revised 1983.
- The Workmen's Compensation Act, Chapter 236 of the Laws of Kenya, 1949, last revised 1988.
- The Factories and other Places of Work Act, Chapter 514, first enacted 1951, last revised 1972.
- The National Hospital Insurance Act, Chapter 225, 1966, last revised 1977.
- The National Social Security Fund Act, 1965, last revised 1989.

Since May 2001 Kenya's labour laws have been under extensive review. Among the objectives of the review process is to ensure that legislative measures are in place to give effect to ILO core Conventions.²⁷

This legislative framework is supplemented by various collective agreements entered into between MNEs or sectoral employers and trade unions. Collective bargaining has a long tradition in Kenya. Steps have been taken recently to promote collective bargaining as a key element in industrial relations. In recent years, the Government and the social partners have jointly organized sensitization and awareness seminars with the assistance of the ILO and UNDP, with the aim of enhancing the appreciation of the collective bargaining process in industrial relations by both employers and government officials.

Because they are far better organized than the rest of the agriculture sector, plantations have for years fixed terms and conditions of service through collective bargaining. Structurally, collective bargaining takes place at two levels: at the industrial (or sectoral) level and at the enterprise level. Both bargaining levels have been used by MNEs operating in the plantation sector. MNEs in the plantation sector are members of organized employer groups which negotiate with unions on the terms and conditions of service. The principal employers' associations covering the agricultural sector include the Kenya Tea Growers' Association, Kenya Coffee Growers' Association, the Sisal Growers' and

²⁶ *Seventh Survey on the effect given to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, Part II, Summary of reports submitted by governments and by employers' and workers' organizations*, GB.280/MNE/1/1 (Geneva, 2001), pp. 245, 305.

²⁷ Kenya has ratified Conventions Nos. 29, 98, 100, 105, 111, 138 and 182, that is, seven of the eight core labour standards.

Employers' Association and the Agricultural Employers' Association. The Federation of Kenya Employers (FKE), to which these associations are affiliated, has four main objectives:

- to advocate, promote and defend Kenyan employers on matters relating to their interests;
- to encourage the principle of sound industrial relations and observance by employers of fair labour practices;
- to promote sound management practices amongst employers, through training, research and consultancy services; and
- to act as a forum of consultations amongst employers.²⁸

Plantation workers are represented by the Kenya Plantation and Agricultural Workers' Union (KPAWU) and, in the case of sugar, by the Kenya Union of Sugar Plantation Workers (KUSPW). In 2000, KPAWU had a membership of 38,674 and KUSPW had 7,900 members.²⁹ Collective bargaining is handled directly by the unions. Both KPAWU and KUSPW are affiliated to the country's only trade union centre, the Central Organization of Trade Unions (COTU).

The agricultural sector as a whole has experienced a high incidence of industrial unrest in recent years, with the greatest number of workdays lost to strikes in 1997 and the greatest number of workers involved in strikes in 1998. (See table 3.1 below.) However, in separate meetings with ILO representatives preparing this study, some trade union representatives at national, sectoral and enterprise level characterized labour relations with MNE employers in the plantation sector as "good" to "excellent". As one trade unionist observed, although the views of employers and workers might differ, the door was always open for discussion. MNE employers respected freedom of association and implemented agreements. In addition, he saluted MNE efforts to provide medical care, schools, childcare facilities and transport to hospitals in the event of illness or injury. In many cases, MNE employers provided welfare services for employees far beyond those required by law. Whereas housing was considered a major problem affecting agricultural workers in general, trade union representatives affirmed that the standard of housing provided on MNE estates was superior to the norm.

Table 3.1. Strikes, workers involved and workdays lost in the agriculture sector (1997-2000)

	1997	1998	1999	2000
No. of strikes	18	20	3	12
No. of workers	10 120	30 500	546	9 205
Workdays lost	104 681	71 930	670	11 598

Source: Ministry of Labour, Industrial Relations Section, as cited in Federation of Kenya Employers: *Annual Report 2000*, p. 31.

²⁸ Federation of Kenya Employers: *Annual Report 2000* (Nairobi), p. 12.

²⁹ Registrar of Trade Unions, cited in Fashoyin, op. cit., p. 10.

Current or recent collective agreements from five agricultural subsectors (pineapple, tea, sugar cane, sisal and coffee)³⁰ contained provisions on a number of common points. While the actual content of the provisions varied from one agreement to another, all agreements specified pay rates (including rates for overtime and for work on public holidays or rest days); hours of work, leave (including annual leave with transport allowance, compassionate leave, leave for trade union business, maternity leave, and sick leave), acting allowance, housing, and burial expenses. In addition, all had detailed provisions covering probation, the warning system with regard to disciplinary action, termination of contract, redundancy, severance pay, and “gratuity” or service pay upon retirement. In all agreements examined, the negotiated terms and conditions with regard to basic pay rates and the period of sick leave provided far exceeded the legal minimum requirement.

3.2. Employment

In a recent report to the ILO, the Government of Kenya has noted that the growth of the labour force in Kenya has outstripped the rate of growth in employment opportunities. MNEs have contributed meaningfully to the promotion of employment opportunities and reduction of poverty in the country.³¹ MNE plantations not only provide significant direct employment in rural areas, but help sustain the livelihoods of many thousands of other workers through indirect employment as well.

Most plantations operate with a core staff of permanent workers, but call upon large numbers of seasonal or casual workers as the need arises. Seasonal workers thus form a substantial part of the plantation workforce. Most seasonal workers are recruited to work during the peak ploughing and harvesting seasons and come from areas adjoining the plantations. In some cases however, the plantations draw a substantial portion of both their seasonal and permanent workers from migrant populations living around the estates. Such migrant workers retain strong cultural contacts with their areas of origin outside the plantation district.

Besides the employment of permanent and seasonal labour, there is frequent recourse to casual workers, i.e. those employed and paid at the end of each day worked. This trend is encouraged by, amongst other factors, unpredictable weather conditions, unstable market demand for produce, and labour laws which require that certain benefits, such as notice pay, leave allowances, and medical attention, be provided to seasonal and permanent employees. To counter this development, unions in the plantation sector have worked to include provisions in collective agreements limiting the length of time during which employees may be engaged on a seasonal or casual basis.

³⁰ Agreement between Del Monte Kenya Limited and Kenya Plantation and Agricultural Workers’ Union (1 July 1999-30 June 2001); Collective Agreement between the Kenya Tea Growers’ Association and the Kenya Plantation and Agricultural Workers’ Union in respect of Unionisable Tea Employees (1 January 2000-31 December 2001); Kenya Sugar Industry CBA (May 2001-April 2003) Terms and Conditions of Employment between Sugar Employers Group of the Federation of Kenya Employers and the Kenya Union of Sugar Plantation Workers; Collective Bargaining Agreement between the Members of the Sisal Growers’ and Employers’ Association (Kenya) and the Kenya Plantation and Agricultural Workers’ Union (1 June 1999 and 31 May 2001); and Memorandum of Agreement between the Kenya Coffee Growers’ and Employers’ Association and the Kenya Plantation and Agricultural Workers’ Union (1 January 1997-31 December 1999).

³¹ ILO: *Seventh Survey*, op. cit., p. 99.

Three of the collective agreements examined³² contained provisions regarding casual and seasonal labourers. In the sugar subsector, a casual worker whose employer has offered him or her work continuously for three months is to be converted into monthly terms. A recent agreement in the coffee subsector limited the engagement of seasonal workers to a four-month period, but provided paid pro-rata leave to an employee after two months of continuous employment. It also stated that seasonal workers were eligible for union membership. In the tea subsector, seasonal workers could be employed for a maximum period of six consecutive months after which, if they continued to be engaged, they were deemed to be permanent employees. Seasonal workers who had performed satisfactorily were also to be given priority in future hiring.

Whereas more than one employer commented that there was a trend towards more permanent employment of the plantation workforce, trade union representatives expressed deep concerns over the developing trend towards the outsourcing of work. In the current climate of market liberalization, these two trends may well be running in parallel as companies focus on core activities and shed others. Workforce reductions on the plantations mean a loss of members for the unions, and workers engaged by subcontractors face difficulties registering as union members. Concern arises from the fact that workers engaged by subcontractors are not covered by the collective agreements applicable to other plantation workers and tend to have far inferior terms and conditions of work. Thus, as much agricultural work such as weeding, cane-cutting and transport gets contracted out, the quality of employment for the workers engaged by subcontractors is likely to decline. Some observers fear that the increasing dependence of plantations on outsourced labour, much of which is carried out by casual workers under lower working conditions, has impeded the improvement of working conditions of regular plantation workers.

3.3. Conditions of work: Wages, hours of work, leave

Quality of employment includes a complex array of factors such as working conditions, wages paid, and other benefits that accrue to an employee. These are often compared to the wages and benefits earned by employees of the same calibre in other sectors. Working conditions in live-in MNE plantations were generally considered to be better than those in other plantations, whether they were located near urban centres or comprised the main settlement in a rural area.

As discussed in the conclusions, *infra*, paragraph 34 of the Tripartite Declaration provides that, when multinational enterprises operate in developing countries, where comparable employers may not exist, they should provide the best possible wages, benefits and conditions of work, within the framework of government policies.³³ These should be related to the economic position of the enterprise, but should be at least adequate to satisfy basic needs of the workers and their families. Where they provide workers with basic amenities such as housing, medical care or food, these amenities should be of good standard.³⁴ According to a recent report to the ILO from the Government of Kenya, which did not specifically focus on the plantations sector, wages, benefits and conditions of work in MNEs are generally similar to those in comparable local enterprises; in some cases they

³² See reference in section 3.1 for the list of collective agreements examined.

³³ Reduction of Hours of Work Recommendation, 1962 (No. 116).

³⁴ Plantations Convention, 1958 (No. 110) and its accompanying Recommendation No. 110, Workers' Housing Recommendation, 1961 (No. 115), Medical Care Recommendation, 1944 (No. 69), Medical Care and Sickness Benefits Convention, 1969 (No. 130) and its accompanying Recommendation No. 134.

are better. In most cases, wages are determined through collective agreements. Working conditions other than wages, especially those relating to health and safety, are not addressed through collective agreements since workers are just becoming aware of the need for and right to health and safety.³⁵

Wages

The Employment Act does not fix minimum wages in the plantation sector. The wage-fixing mechanism falls under the Regulation of Wages and Conditions of Employment Act, Chapter 229 of the Laws of Kenya, which provides for the establishment of Wages Advisory Boards and Wages Councils for the regulation of remuneration and conditions of employment in various sectors of the economy. Under the Regulation of Wages (Agricultural Industry) (Amendment) Order, 2000, the minimum basic consolidated wage for an unskilled adult employed in agriculture was fixed as Ksh1,428 per month.

In Kenya, most plantations are excluded from the application of wage orders, leaving the wage-fixing mechanisms in the plantations to collective bargaining by employer and union representation in each subsector. Because estates are both working and residential units and given the fact that plantation crops are subject to the vagaries of the world market, the government has felt that the self-regulating nature of the plantation sector in so far as wage fixing is concerned is the best for the sector.

In fact, the question of wages has been one of the most contentious issues in plantations in Kenya. Negotiated increases in the minimum wage have not always kept pace with inflation, which has led to significant reductions in workers' purchasing power and disputes with the management of the plantations. For their part, the plantations have been hit by unstable prices in the international market and increasingly expensive agricultural inputs leading to staff lay-offs.

Nonetheless, because plantations are far better organized than the rest of the agricultural industry, the wages and terms of service set through collective bargaining have tended to be more favourable than what obtains in the rest of the agricultural sector. Recent collective agreements from five agricultural subsectors (pineapple, tea, sugar cane, sisal and coffee) all specified minimum pay rates for workers which were superior to the minimum basic wage set in the Agricultural Wage Order. In the tea industry, for example, the negotiated minimum daily rates applied to field labour were more than twice the rate set under the Wage Order, and the actual average take home pay for a field worker employed on plucking duties in an MNE plantation was roughly three times that level. In the case of the sugar industry, the negotiated minimum wage set for a general worker (UG 1) was more than three times the level set in the Wage Order.

All the collective agreements examined³⁶ indicated annual wage increments for each of the two years covered by the agreements. For the year 2000, the increments ranged from 5 to 12 per cent according to subsector.³⁷ Agreements specified minimum, and sometimes

³⁵ ILO: *Seventh Survey*, op. cit., p. 223.

³⁶ See reference in section 3.1 for the list of collective agreements examined.

³⁷ These increments might appear generous in light of the 1999 inflation rate of 2.7 per cent. However, in the period 1990-99, the average annual inflation rate was 15.9 per cent, whereas negotiated wage increments grew at a much slower pace, resulting in declining purchasing power for agricultural workers for most of the decade. See African Development Bank: *ADB Statistics Pocketbook 2001* (Abidjan, 2001), p. 74.

maximum, rates for each category of worker employed, as well as standard overtime payments of 1.5 times the hourly rate and twice the hourly rate for work on public holidays or rest days in conformity with legal requirements.

Hours of work

The maximum working week in Kenya is set at 52 hours divided into six days. Most collective bargaining agreements provide for a shorter working week, however, and the plantation sector is no exception to this rule. In the five subsectors examined, agreed working hours generally varied from 44 to 46 hours spread over a six-day work week, after which overtime pay of 1½ times the hourly rate applied. In addition, a second-shift allowance applied to night work in the pineapple and sugar industries where processing operations continue beyond daylight hours. The standard agreed work week for daily rated field workers on tea plantations³⁸ consisted of 6½ hours per day for six days for a total of 39 hours. For tea pluckers, however, hours of work were guided by “the amount of crop offering” with payment based on the kilos of tea plucked. During peak periods, hours of work were extended beyond the standard eight hours per day, and after the required overtime work, pluckers could continue at their own free will.

Leave

The minimum statutory paid annual leave in Kenya is 21 working days. The collective bargaining agreements in the five subsectors examined³⁹ provided between 24 and 28 working days. All contained provisions regarding an annual leave transport allowance to cover or defray the travel costs of the employee and the family. A recent agreement in the coffee subsector provided paid pro-rata leave for seasonal worker after two months of continuous employment. In the tea subsector, seasonal workers were entitled to pro-rata leave after working for three months.

Compassionate leave, which employees might use in the event of bereavement in the family, was included in all the collective agreements as well, although the exact terms varied from one subsector to another. As a general rule, compassionate leave was deducted from the annual leave entitlement and a pay advance could be provided for any days worked which had not yet been paid.

Sick leave provisions in the collective agreements examined far exceeded those required by law. According to Kenyan legislation, agricultural workers are entitled to 30 days of sick leave per year at full pay and 30 days at half pay. In the sisal subsector, the collective agreement provided for 40 days’ leave at full pay and 50 days at half pay, whereas in the sugar cane and pineapple subsectors, workers were accorded 60 days per annum at full pay and 60 days at half pay.

All the collective agreements examined mentioned a woman employee’s entitlement to two months of paid maternity leave provided that she lose her right to paid annual leave in that year. These provisions are in accordance with Kenyan legislation. Three agreements stated that the woman should not incur loss of privilege during maternity leave. Two specified the woman’s right to nursing breaks for a limited period following her return to work.

³⁸ In Kericho, Nandi Hills and Sotik Branches.

³⁹ See reference in section 3.1 for the list of collective agreements examined.

All the collective agreements provided for paid leave for trade union representatives to attend to union affairs, subject to prior arrangement.

3.4. Housing

Since the establishment of plantations in Kenya, provision of housing and essential facilities for employees has been considered indispensable. The recruitment and retention of labour in the estates depends to a large degree on the kind of living conditions the estates offer, but in view of the heavy investments required to house workers in this labour-intensive sector, it has been a challenge for plantations to provide adequate accommodation for their employees. The quality of housing varies greatly from one estate to another and living conditions on some plantations are very poor. Trade union representatives cited housing problems as one of the major concerns facing agricultural workers in Kenya.

Section 9 of the Employment Act, Chapter 226 of the Laws of Kenya provides that:

Every employer shall at all times, at his own expense, provide reasonable housing accommodation for each of his employees either at or near the place of employment or shall pay to the employee such sufficient sum as rent in addition to wages or salary as will enable such employee to obtain reasonable accommodation; PROVIDED that, if by reason of the conditions of employment and wages payable, any person is placed at a disadvantage by the application of this section, the minister may by a notice in the Gazette exclude the application of this section to such person and such person shall instead be dealt with as shall be specified in the notice.

A legal notice was subsequently issued to the effect that where an employer pays a consolidated wage to an employee, i.e. a wage which includes an element of housing allowance, such an employer would not be expected to provide the employee with housing facilities or pay the employee a separate “sufficient sum as rent in addition” to the employee’s wages.

The ILO Plantations Convention, 1958 (No. 110), does not require that employers provide housing for their workers.⁴⁰ Article 85, however, provides that “the appropriate authorities shall, in consultation with the representatives of the employers’ and workers’ organizations concerned, where such exist, encourage the provision of adequate housing accommodation for plantation workers”. It goes on to state that the minimum standards of such accommodation shall be laid down by the appropriate public authority and shall include specifications with regard to the construction materials to be used, the minimum size, the layout, ventilation, floor and air space, veranda space, as well as cooking, washing, storage, water supply and sanitary facilities.

The Government of Kenya has indicated that, whereas the standard of housing on most plantations conformed to the minimum standards of housing laid down by various local authorities and to the provisions of the Employment Act, 1976, there was still a strong need for improvement. While plantations strive to provide decent and adequate housing to their employees, many plantation estates in Kenya have not met the desired target.

Employers are obliged by law to provide housing or a housing allowance to employees. In practice, since many plantations are unable to meet this requirement fully,

⁴⁰ Convention No. 110 has not been ratified by Kenya. It is cited here as the relevant international labour standard on plantations.

preference is usually given to workers who have not been recruited from the environs of the plantation or who are unable by their own efforts to obtain suitable accommodation for themselves and their families, or to those working at such a distance from their homes that it would be impractical to commute on a daily basis.

Because most permanent workers reside on their respective plantations, their lives and work are inseparable. Considerations with regard to the workers' health, safety and well-being therefore go beyond the field and factory to include the home and the services provided for workers and their families.

In most plantation estates in Kenya, the type and size of housing provided to an employee is conditioned by the grade of the employee. In certain cases, housing facilities are provided for the workers themselves but nothing is foreseen for their families. Also, the nature of the housing provided may vary according to the marital status of the worker.

Housing facilities in a number of plantations appeared to be in need of repairs and upgrading to improve the living standards of workers; some houses put up before Kenyan independence should simply be replaced. Workers in some estates are housed in rows of brick built quarters with shared toilet facilities and water points, whereas in others, grass-thatched mud houses are still common.

In some of the estates visited, sanitation was a real worry for residents. Workers complained of poor or non-existent sanitation made worse by the congestion in the living quarters. In the lower grade housing estates, one pit latrine was shared by several families while drainage systems were non-existent in a majority of the cases. In some instances, employees had to draw water from nearby rivers and streams due to the absence of piped water. Cases of waterborne diseases were cited quite frequently among the employees living in such situations.

MNE plantations are considered to be the most able to marshal the financial resources required to create favourable employment and living conditions. The MNE plantations visited provided rent-free housing to most, if not all, of their permanent employees and were responsible for the general maintenance of the estates. Most houses benefited from access to piped water, some had electricity. Local enterprises and government-owned plantations do not always have the resources to match this. On several non-MNE sugar plantations, for example, a much smaller portion of workers were housed, many had to travel long distances to work, and housing allowances were lower than local rents.

One MNE plantation visited had embarked on a major programme to improve staff housing over the next five years. More than 60 traditional one-room round houses, built roughly 50 years earlier by a previous estate owner, were being replaced by new cinder block and cement row houses, each apartment comprising two rooms and a separate toilet and kitchen. An annual budget of approximately Ksh5million was to be devoted to this project over the next five years.

In contrast, in quite a number of cases where efforts have been made to improve housing, the main beneficiaries seem to be employees in the upper echelons. At the lower levels, the housing situation appears to have deteriorated, with many employees having to share houses. Houses meant for single families are now being shared by more than one family. Compared to their counterparts living next to the plantations, however, the plantation workers still have much better housing conditions.

Casual workers are not provided with housing in a number of plantations. Because many are migrant workers, they are forced to reside in shanties that have sprung up near the estates due to lack of other housing. Many of these shanties are grass-thatched mud houses without even the most basic sanitary facilities. The hygiene situation in these

settlements has contributed to the spread of disease, as witnessed by frequent outbreaks of cholera and waterborne diseases, such as typhoid. Dysentery, attributable to poor sanitary conditions, and malaria are also common features of these settlements. A high rate of sexually transmitted diseases has been recorded in these areas. While MNE plantations may have little control in determining the living conditions in the satellite shanties or slums that have mushroomed around the plantation estates, nonetheless, the matter of housing and sanitation remains highly relevant to their economic success and social development, given the close relationship between housing conditions and workers' health.

Recreational facilities

The Plantations Recommendation, 1958 (No. 110) stipulates that “appropriate measures should be taken to encourage the provision of recreation facilities for the workers in or near the undertaking in which they are employed ...”.

Many plantation estates organize sports and cultural activities for their workers and this has been a major factor in attracting workers to particular estates. Sports like soccer and volleyball are common features, especially in the sugar and tea plantations. All the tea and sugar plantations visited for this study have resident soccer teams in which employees can participate. Such sports activities provide useful and affordable recreation to workers. MNEs' support for such activities has surpassed that of locally owned plantations; this may be because MNEs are better endowed financially or because their management more fully appreciate the need for recreation.

Other recreational facilities in the estates include social halls offering a variety of indoor sporting activities and other entertainment facilities like television and cinema. While recreational halls exist in most of the estates visited, the facilities provided and their quality varied from one estate to another. A striking disparity was noted in the types of facilities offered to different levels of employees within the individual estates. These ranged from halls with a television set and a dartboard for the lower grade employees to expensively equipped sports clubs with satellite dish connections and health clubs for managers.

3.5. Medical benefits

Due to the hazardous nature of agricultural occupations and the often remote location of plantations, access to medical care is a critical employment benefit for plantation workers. Employers have traditionally provided basic medical care on the plantations, in the form of dispensaries or clinics which are able to treat minor illnesses or injury. Referral cases are handled in better equipped government and private hospitals. The employer is responsible for providing transportation to the hospital.

Dispensaries and clinics staffed with medical personnel able to provide first aid treatment as well as preventive health care were a feature on all the estates visited. In a few cases, MNE plantations operated their own hospitals; at least one had a medical laboratory. Several contributed equipment, medicine, financial support or other services, such as piped water, to hospitals in the nearby community. Some had undertaken major construction projects, building additional wards or improving road access to local hospitals.

Most of the collective agreements examined⁴¹ contained provisions concerning medical treatment for plantation employees. With regard to occupational injuries, several

⁴¹ See reference in section 3.1 for the list of collective agreements examined.

cited the Workmen's Compensation Act. As far as treatment for illness or injury which was not work-related was concerned, provisions varied. Two agreements referred to the medical treatment rules contained in the Employment Act; another stated that proper medicines were to be provided during illness and, if possible, medical attendance during serious illness. The collective agreements covered medical care only for plantation employees. Family members were not entitled to medical treatment under the terms of the agreements, although those residing on the plantations were entitled to transportation to hospital in the event of illness or injury.

In practice, the MNE plantations visited all provided some form of free medical care not only to employees, but also to their dependants. A detailed monthly report provided by one MNE dispensary showed that both employees and their dependants had received treatment. Malaria, respiratory illnesses, skin disease and accidents, including fractures and burns, were the most frequent complaints. An MNE sugar plantation had set up a mother-child health unit, which provided five basic immunizations, information on nutrition, family planning advice, contraceptive pills and vasectomies free of charge to employees as well as to those living in the surrounding zone. Another MNE plantation focused on preventive health care, including both occupational safety and health and family planning services.

One health issue of overarching importance to the population at large has elicited strong initiatives from several MNE employers: this was HIV/AIDS. The cost of HIV/AIDS to enterprises has been tremendous in terms of loss of life, loss of production capacity due to HIV/AIDS-related absenteeism, replacement and training of staff, healthcare costs and funeral expenses. The Federation of Kenya Employers (FKE) has played a leadership role in developing a policy of HIV/AIDS prevention and management in the workplace based on 20 guiding principles. Among these are non-discrimination in employment, compassionate treatment of employees who are living with HIV infection, employee education, safe work practices, decisive action to discourage sexual harassment, and mobilization of resources to support HIV/AIDS affected people in their community. On several MNE estates, management has taken a proactive approach, raising awareness not only among employees, but in the surrounding community as well. On one MNE plantation, management reported that it had seen the death rate among its employees drop from four deaths a week three years ago to the current rate of one death per month.

3.6. Education

The provision of educational facilities for their children is considered part of the welfare package for plantation employees. In MNE plantations, schools are comparatively well developed and equipped and this can be an important factor in the retention of staff. Free or subsidized nursery schools were available on all MNE plantations visited for this report and some employers offered incentives, such as free porridge, school health programmes and immunizations in order to encourage attendance. In one plantation, management ensured attendance, by insisting that no child be left alone in the labour camp.

All plantations also provided primary schools, although there were marked differences in the quality of these institutions from one estate to another. In most plantations, there were two sets of primary schools. One catered for the children of lower grade employees and also accepted children from the surrounding community. The children of upper management and higher grade staff usually attended better quality schools in consideration of fees paid by the managers. Due to their superior performance in the national examinations, these schools also attracted children from wealthy families who were not employees of the plantations.

As a general practice, the MNEs provided the school buildings, desks and basic classroom equipment, and in some cases, housing for teachers. The Government was responsible for the teachers' salaries. Parents must provide school uniforms, books and, in some cases, activity fees. Primary schooling constitutes a considerable expense for parents with low incomes and several children to support. Nationwide, less than half of those who enrol complete their primary education. High drop-out rates particularly affect children from the outlying communities and attest to the parents' inability to meet the heavy financial demands. With their low level of formal education and their lack of skills, many young dropouts are eventually absorbed into the plantation workforce, following in the footsteps of their parents as soon as they are of age.

To assist parents to keep their children in school, some companies organize *harambees* (fund-raising meetings) in order to raise money to offset the cost of school books. An MNE in the pineapple subsector pays tuition costs for children enrolled in secondary school, although most of those who have benefited are the children of management staff. An MNE in the sugar subsector provides bursaries to enable 40 high-school students from the sugar zone to attend secondary school anywhere in Kenya. The Kenya Tea Growers' Association provides support to two provincial secondary schools, one for boys, one for girls.

3.7. Child labour

The ILO Minimum Age Convention, 1973 (No. 138), which was ratified by Kenya in 1979, states that ratifying Members shall "pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons". At the time of ratification, Kenya declared 16 years to be the minimum age for admission to employment or work.

MNE employers expressed a high degree of awareness regarding the elimination of child labour. Indeed, all MNEs visited had a company policy against child labour. In several plantations, management reported that they did not engage workers under the age of 18 and required a national identity card as proof of age at the time of recruitment. An MNE in the pineapple subsector had installed an electronic clocking system to calculate employees' hours of work; the system software relied on the national ID card to identify workers and credit their hours.

Trade union representatives confirmed that child labour was not a problem on MNE plantations, but raised concerns regarding the use of child labour by subcontractors. A significant portion of casual workers in commercial agriculture were below the legal age for employment. A 1996 case study found that child wage labour was found predominately on commercial agricultural plantations, where children were estimated to make up 20 to 30 per cent of the casual labour force. During the peak harvest season, for example, up to 30 per cent of the coffee pickers were under 15. On sugar plantations, children were engaged mainly in planting, primarily during the rainy season, or weeding, carried out three times a year. More children were found to be working on large-scale outgrower farms than on nucleus estates.⁴²

⁴² ILO: "Child labour in commercial agriculture in Africa" (IPEC Technical Workshop on Child Labour in Commercial Agriculture in Africa, Dar es Salaam, United Republic of Tanzania, 27-30 August 1996), p. 9.

Certain types of payment systems were seen to encourage child labour, for example, payment upon completion of a task unit, wherein the task unit was at the limit or beyond the capacity of a single adult worker to achieve within a working day. When payment was based on the weight of produce harvested or the number of linear metres weeded or planted, adult workers might be encouraged to use the labour of family members, including children, to augment the family earnings.

The issue of subcontractors' employment practices is a delicate one. Nonetheless, trade unionists suggested that when outsourcing work to subcontractors, MNEs should "look beyond the contract" to see how the job was being done.

3.8. Occupational safety and health

Agriculture is a hazardous occupation carried out in difficult, and sometimes dangerous working conditions. The specific hazards facing plantation workers vary from one plantation to another. The main areas of concern include injuries from machinery and equipment, unsafe handling of and exposure to chemicals for crop protection, and injuries from the crops themselves, especially during harvesting. Other common hazards include long daily and weekly hours of physically strenuous work, the repeated shouldering of heavy loads, falls, insect and snake bites, and adverse weather conditions. The injury rate is high in agriculture as is the risk of illness or death due to exposure to toxic chemicals, biological agents and transmissible animal diseases.

Ensuring workers' safety and health in the workplace has long been considered an area where MNE practices make a difference – in their own workplaces and often through the linkages MNEs establish with providers of goods and services up and down the supply chain. MNEs are in a good position to implement health and safety practices of a high international standard. For example, an ISO certified MNE operating in the pineapple subsector posted notices along the perimeter of fields recently sprayed with pesticides prohibiting entrance until the danger period for exposure had passed. It also used its medical service to raise awareness among workers of safety and health issues.

Responsible employers ensure that enterprise practices meet the requirements of the law – for example, the company provides protective clothing for its workers. However, to be fully effective, companies with good occupational safety and health practices focus on instilling a safety culture in the workforce.⁴³ Incorporating safety and health matters in collective agreements with workers and their organizations is one step towards achieving this.⁴⁴ Collective agreements offer the opportunity to raise awareness within the workforce as a whole of the important mutual benefits to be derived from joint efforts to implement safe work practices. This opportunity appears not to have yet been used to its full potential in the plantation sector.

The collective bargaining agreements of all five agricultural subsectors examined⁴⁵ contained provisions regarding the employer's obligation to provide protective clothing. Only one, however, signalled an obligation on the part of workers to use the protective equipment provided. It stated that failure to use the protective equipment supplied would

⁴³ See ILO: *Guidelines on occupational safety and health management systems: ILO-OSH 2001* (Geneva, 2001).

⁴⁴ See para. 40 of the Tripartite Declaration.

⁴⁵ See reference in section 3.1 for the list of collective agreements examined.

constitute a disciplinary offence and would result in a written warning. All collective agreements contained provisions regarding compensation for occupational injury in accordance with the Workmen's Compensation Act. However, two agreements limited employers' liability for medical benefits, in one case in the event of self-inflicted injury, and in the other in case of incapacity for work due to the employee's gross neglect.

In the sugar subsector, the collective agreement contained two additional safety and health provisions: one regarding medical checkups of employees exposed to occupational hazards, and the other regarding the constitution of a health and safety committee with equal representation of the union and management in accordance with the Factories and Other Places of Work Act. In the tea subsector, a forthcoming collective agreement was expected to contain a clause agreeing to put into place functional health and safety committees. Whereas formerly safety and health had been a management issue, there would in future be a certain devolution of responsibility to workers to exercise due care. The unions would be involved and employees would be trained regarding safety hazards.

A trade union representative in the sugar subsector noted that the occupational accident rate was too high and that the whole sugar industry was trying to improve. He observed that safety and health committees existed at the branch level, but should be more active. Many were dormant. In particular, he wanted to see workers trained in the safe handling of chemicals. Another trade union representative noted that subcontracting arrangements made it difficult to tackle certain safety and health problems. For example, women weeders were regularly exposed to pesticides while at work, but there was little the union could do since the subcontractors who engaged the women were not bound by the collective agreement.

Voluntary codes of conduct can also contribute to the development of safe work practices. One example is the National Code of Practice for employers in the horticulture subsector. Among the guidelines on safety and health is the recommendation that every enterprise have a health and safety committee which meets regularly and ensures prompt action. The committee should be composed of a senior manager, a medical officer or safety advisor, a production manager, a supervisor and workers/trade union representatives. Also, employees should receive health and safety training at the expense of the employer. The Code contains a separate chapter on the use of pesticides and fertilizers, which includes guidelines on the protection of workers.

Considering the close relationship between occupational safety and health and productivity, and the growing awareness among workers' representatives of the hazards of agricultural work, ensuring safe and healthy work practices through joint efforts would appear to be an area of potential collaboration between employers and trade unions. Much is to be gained in terms of workers' well-being and enterprise productivity.

4. Conclusions

This section considers the activities of plantation MNEs in light of the aims and approaches of the MNE Declaration (see Appendix 1), and the extent to which the collaboration of the Government and trade unions with employers and MNEs has facilitated those contributions. Along with the specific themes of the Declaration reviewed below, the service of MNEs as good corporate citizens was notable in the numerous examples of voluntary contributions by MNEs in plantations to worthwhile community projects and education and health-care facilities. In some cases, preventive health care and education were offered not only to employees and their children but also to local residents, including on HIV/AIDS awareness.

4.1. Industrial relations (MNE Declaration, paragraphs 41-56)

In the Industrial Relations chapter of the MNE Declaration (paragraphs 41-56), MNEs are urged to practice sound industrial relations, including in the areas of freedom of association and the right to organize, collective bargaining, consultations, grievances and settlement of industrial disputes. The Government is to contribute to the enabling environment, in applying ILO principles on freedom of association throughout the country in all sectors and geographical areas and in disseminating information on industry performance and liberally permitting freedom of association across borders for trade unions. Kenya's labour laws have been under extensive review since 2001 with, among other objectives, the intent to give effect to ILO core Conventions, among which Kenya has ratified Convention No. 98 (though not No. 87). In particular, the exemption of the plantation sector from wage-fixing mechanisms is one area worthy of further inquiry. (See sections 3.3 and 4.3.) However, a strong culture of collective bargaining and consultation exists among MNEs, plantation unions and the Government. This culture is maintained not only at enterprise level but also at the subsectoral level through subsectoral associations, and at the sectoral level as well as the national level through representative organizations.

4.2. Employment (MNE Declaration, paragraphs 13-28)

In the Employment chapter of the MNE Declaration (e.g., MNE Declaration, paragraph 16), MNEs are urged to adopt policies that increase employment opportunities and standards, taking into account employment policies of the host government as well as the need for security of employment and the long-term development of the enterprise. Most MNEs in the plantation sector have found it necessary, in order to lower labour costs, to contract out some of their ancillary activities and strengthen the permanent employment base for their core activities. In the latter capacity MNEs have been useful employment pools for graduates from institutes of higher learning for management posts as well as attracting unskilled workers for field work. With the trend toward outsourcing, however, the additional jobs created under the newly contracted employer are not covered by collective agreements applicable to other plantation workers and those employed tend to have far inferior terms and conditions of work. Employment may be intermittent and livelihoods precarious. There may be problems in registering as union members and children are more likely to be employed. This trend toward outsourcing has raised concerns that the improvement of working conditions has been impeded, both for regular workers on plantations and among those who take on the outsourced jobs. Some have urged MNE plantations that deal with subcontracting agents to look beyond the commercial contract to see how the work was being done and to encourage subcontractors to respect higher standards.

4.3. Conditions of work and life (MNE Declaration, paragraphs 33-40)

Wages and general terms and conditions of work. In the chapter on conditions of work and life in the MNE Declaration, MNEs operating in developing countries are urged to provide the best possible wages, benefits and conditions of work, within the framework of government policies, and in any case, adequate to satisfy basic needs of workers and their families. (See, e.g., MNE Declaration, paragraph 34.) Terms and conditions of work in live-in MNE plantations visited were generally considered to be equal to or better than those in other plantations, whether they were located near urban centres or comprised the main settlement in a rural area. Wage-fixing mechanisms in plantations are left to collective bargaining rather than addressed by law. Wages have thus been addressed in collective agreements, but this process has been one of the most contentious areas in negotiations.

Housing. Where MNEs provide workers with basic amenities such as housing, medical care or food, the MNE Declaration urges that these amenities should be of a good standard. Consistently with the ILO Plantations Convention, 1958 (No. 110), plantation employers in Kenya are required by law to provide reasonable housing or a housing allowance to employees. Improving the quantity and quality of housing is a nation-wide concern, which is also reflected in the plantation sector. The quality of housing varied greatly among the estates visited, and living conditions on some plantations were very poor. The Government and the social partners are all aware of the need to remedy the problems of substandard housing, overcrowding and poor sanitation which affect many agricultural workers. Casual workers in particular are at risk, as they are not provided with housing in a number of plantations. The outbreaks of disease in the satellite shanties that have mushroomed around the plantation estates where the casual workers live reflect the need to address the various dimensions implicated by the trend toward outsourcing (see 4.2 above). As discussed in section 3.4 *supra*, permanent workers employed on MNE plantations enjoy better housing conditions than the norm; nonetheless on a number of estates there is room for improvement there as well.

Health care. Most of the collective agreements examined contained provisions concerning medical treatment for plantation employees. In practice, all of the MNE plantations visited provided some form of free medical care not only to employees, but also to their dependants. The HIV/AIDS pandemic, which is a major challenge to Kenya, has elicited strong initiatives from several MNEs and the social partners. As detailed in section 3.5, the Federation of Kenya Employers has played a leadership role in developing a policy of HIV/AIDS prevention and management. On several MNE estates management has taken a proactive approach to raising awareness among employees and in the surrounding community as well. Workers' organizations have a special role to play in sensitizing workers and their families to the nature of the disease, its causes, how to prevent it and how to cope with the problems of living with HIV/AIDS.

Child labour and education. On MNE plantations visited, schools were comparatively well developed and equipped at primary level, and efforts were made to facilitate access and lend support to secondary schools for the children of employees. As highlighted in section 3.7, child labour was not a problem on MNE plantations but was of concern among subcontractors. MNEs as well as national enterprises are urged under the MNE Declaration to respect the minimum age for admission to employment in order to secure the effective abolition of child labour. (See MNE Declaration, paragraph 36.) The Government has recently taken bold steps to protect children against child labour. Such steps would be greatly strengthened by employers like MNEs taking pragmatic actions through all available means to ensure that abuses, which they themselves are avoiding, are not practiced by their subcontractors.

Occupational safety and health. In the subsection on safety and health in the MNE Declaration, MNEs are urged to maintain the highest standards of safety and health, in conformity with national requirements, bearing in mind their knowledge of special hazards. Until recently on plantations, occupational safety and health has not been an area of active partnership between employers and workers, and collective bargaining agreements only infrequently reflect such concerns. Awareness is now growing within workers' organizations of the extent of work-related accidents and illness due to unsafe work practices, but their role in promoting safe work practices has not always been well defined. Cooperation between employers and workers to build the capacity of workers and their representatives to participate more fully with management in instilling a safe work culture could help to lower the rate and severity of accidents. Positive joint achievements in safety and health in the workplace can contribute both to enterprise productivity and workers' well-being.

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Appendix I

Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

(adopted by the Governing Body of the International Labour Office at its 204th Session (Geneva, November 1977) as amended at its 279th Session (Geneva, November 2000))*

The Governing Body of the International Labour Office:

Recalling that the International Labour Organization for many years has been involved with certain social issues related to the activities of multinational enterprises;

Noting in particular that various Industrial Committees, Regional Conferences, and the International Labour Conference since the mid-1960s have requested appropriate action by the Governing Body in the field of multinational enterprises and social policy;

Having been informed of the activities of other international bodies, in particular the UN Commission on Transnational Corporations and the Organization for Economic Cooperation and Development (OECD);

Considering that the ILO, with its unique tripartite structure, its competence, and its long-standing experience in the social field, has an essential role to play in evolving principles for the guidance of governments, workers' and employers' organizations, and multinational enterprises themselves;

Recalling that it convened a Tripartite Meeting of Experts on the Relationship between Multinational Enterprises and Social Policy in 1972, which recommended an ILO programme of research and study, and a Tripartite Advisory Meeting on the Relationship of Multinational Enterprises and Social Policy in 1976 for the purpose of reviewing the ILO programme of research and suggesting appropriate ILO action in the social and labour field;

Bearing in mind the deliberations of the World Employment Conference;

Having thereafter decided to establish a tripartite group to prepare a Draft Tripartite Declaration of Principles covering all of the areas of ILO concern which relate to the social aspects of the activities of multinational enterprises, including employment creation in the developing countries, all the while bearing in mind the recommendations made by the Tripartite Advisory Meeting held in 1976;

Having also decided to reconvene the Tripartite Advisory Meeting to consider the Draft Declaration of Principles as prepared by the tripartite group;

Having considered the Report and the Draft Declaration of Principles submitted to it by the reconvened Tripartite Advisory Meeting;

Hereby approves the following Declaration which may be cited as the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office, and invites governments of States Members of the ILO, the employers' and workers' organizations concerned and the multinational enterprises operating in their territories to observe the principles embodied therein.

* *Official Bulletin*, Vol. LXXXIII, 2000, Series A, No. 3.

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1. Multinational enterprises play an important part in the economies of most countries and in international economic relations. This is of increasing interest to governments as well as to employers and workers and their respective organizations. Through international direct investment and other means such enterprises can bring substantial benefits to home and host countries by contributing to the more efficient utilization of capital, technology and labour. Within the framework of development policies established by governments, they can also make an important contribution to the promotion of economic and social welfare; to the improvement of living standards and the satisfaction of basic needs; to the creation of employment opportunities, both directly and indirectly; and to the enjoyment of basic human rights, including freedom of association, throughout the world. On the other hand, the advances made by multinational enterprises in organizing their operations beyond the national framework may lead to abuse of concentrations of economic power and to conflicts with national policy objectives and with the interest of the workers. In addition, the complexity of multinational enterprises and the difficulty of clearly perceiving their diverse structures, operations and policies sometimes give rise to concern either in the home or in the host countries, or in both.
 2. The aim of this Tripartite Declaration of Principles is to encourage the positive contribution which multinational enterprises can make to economic and social progress and to minimize and resolve the difficulties to which their various operations may give rise, taking into account the United Nations resolutions advocating the establishment of a New International Economic Order.
 3. This aim will be furthered by appropriate laws and policies, measures and actions adopted by the governments and by cooperation among the governments and the employers' and workers' organizations of all countries.
 4. The principles set out in this Declaration are commended to the governments, the employers' and workers' organizations of home and host countries and to the multinational enterprises themselves.
 5. These principles are intended to guide the governments, the employers' and workers' organizations and the multinational enterprises in taking such measures and actions and adopting such social policies, including those based on the principles laid down in the Constitution and the relevant Conventions and Recommendations of the ILO, as would further social progress.
 6. To serve its purpose this Declaration does not require a precise legal definition of multinational enterprises; this paragraph is designed to facilitate the understanding of the Declaration and not to provide such a definition. Multinational enterprises include enterprises, whether they are of public, mixed or private ownership, which own or control production, distribution, services or other facilities outside the country in which they are based. The degree of autonomy of entities within multinational enterprises in relation to each other varies widely from one such enterprise to another, depending on the nature of the links between such entities and their fields of activity and having regard to the great diversity in the form of ownership, in the size, in the nature and location of the operations of the enterprises concerned. Unless otherwise specified, the term "multinational enterprise" is used in this Declaration to designate the various entities (parent companies or local entities or both or the organization as a whole) according to the distribution of responsibilities among them, in the expectation that they will cooperate and provide assistance to one another as necessary to facilitate observance of the principles laid down in the Declaration.
 7. This Declaration sets out principles in the fields of employment, training, conditions of work and life and industrial relations which governments, employers' and workers' organizations and

** Paragraphs 1-7, 8, 10, 25, 26, and 52 (formerly paragraph 51) have been the subject of interpretation under the Procedure for the examination of disputes concerning the application of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Copies of interpretations are available upon request to the Bureau of Multinational Enterprise Activities, International Labour Office, 4, route des Morillons, CH-1211 Geneva 22, Switzerland, or at <http://www.ilo.org>.

multinational enterprises are recommended to observe on a voluntary basis; its provisions shall not limit or otherwise affect obligations arising out of ratification of any ILO Convention.

General policies

8. All the parties concerned by this Declaration should respect the sovereign rights of States, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards. They should respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations as well as the Constitution of the International Labour Organization and its principles according to which freedom of expression and association are essential to sustained progress. They should contribute to the realization of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted in 1998. They should also honour commitments which they have freely entered into, in conformity with the national law and accepted international obligations.
9. Governments which have not yet ratified Conventions Nos. 87, 98, 111, 122, 138 and 182 are urged to do so and in any event to apply, to the greatest extent possible, through their national policies, the principles embodied therein and in Recommendations Nos. 111, 119, 122, 146 and 190.¹ Without prejudice to the obligation of governments to ensure compliance with Conventions they have ratified, in countries in which the Conventions and Recommendations cited in this paragraph are not complied with, all parties should refer to them for guidance in their social policy.
10. Multinational enterprises should take fully into account established general policy objectives of the countries in which they operate. Their activities should be in harmony with the development priorities and social aims and structure of the country in which they operate. To this effect, consultations should be held between multinational enterprises, the government and, wherever appropriate, the national employers' and workers' organizations concerned.
11. The principles laid down in this Declaration do not aim at introducing or maintaining inequalities of treatment between multinational and national enterprises. They reflect good practice for all. Multinational and national enterprises, wherever the principles of this Declaration are relevant to both, should be subject to the same expectations in respect of their conduct in general and their social practices in particular.
12. Governments of home countries should promote good social practice in accordance with this Declaration of Principles, having regard to the social and labour law, regulations and practices in host countries as well as to relevant international standards. Both host and home country governments should be prepared to have consultations with each other, whenever the need arises, on the initiative of either.

¹ Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise; Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively; Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 122) concerning Employment Policy; Convention (No. 138) concerning Minimum Age for Admission to Employment; Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Recommendation (No. 119) concerning Termination of Employment and Occupation; Recommendation (No. 122) concerning Employment Policy; Recommendation (No. 146) concerning Minimum Age for Admission to Employment; Recommendation (No. 190) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

Employment

Employment promotion

13. With a view to stimulating economic growth and development, raising living standards, meeting manpower requirements and overcoming unemployment and underemployment, governments should declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.²
14. This is particularly important in the case of host country governments in developing areas of the world where the problems of unemployment and underemployment are at their most serious. In this connection, the general conclusions adopted by the Tripartite World Conference on Employment, Income Distribution and Social Progress and the International Division of Labour (Geneva, June 1976) should be kept in mind.³
15. Paragraphs 13 and 14 above establish the framework within which due attention should be paid, in both home and host countries, to the employment impact of multinational enterprises.
16. Multinational enterprises, particularly when operating in developing countries, should endeavour to increase employment opportunities and standards, taking into account the employment policies and objectives of the governments, as well as security of employment and the long-term development of the enterprise.
17. Before starting operations, multinational enterprises should, wherever appropriate, consult the competent authorities and the national employers' and workers' organizations in order to keep their manpower plans, as far as practicable, in harmony with national social development policies. Such consultation, as in the case of national enterprises, should continue between the multinational enterprises and all parties concerned, including the workers' organizations.
18. Multinational enterprises should give priority to the employment, occupational development, promotion and advancement of nationals of the host country at all levels in cooperation, as appropriate, with representatives of the workers employed by them or of the organizations of these workers and governmental authorities.
19. Multinational enterprises, when investing in developing countries, should have regard to the importance of using technologies which generate employment, both directly and indirectly. To the extent permitted by the nature of the process and the conditions prevailing in the economic sector concerned, they should adapt technologies to the needs and characteristics of the host countries. They should also, where possible, take part in the development of appropriate technology in host countries.
20. To promote employment in developing countries, in the context of an expanding world economy, multinational enterprises, wherever practicable, should give consideration to the conclusion of contracts with national enterprises for the manufacture of parts and equipment, to the use of local raw materials and to the progressive promotion of the local processing of raw materials. Such arrangements should not be used by multinational enterprises to avoid the responsibilities embodied in the principles of this Declaration.

² Convention (No. 122) and Recommendation (No. 122) concerning Employment Policy.

³ ILO, World Employment Conference, Geneva, 4-17 June 1976.

Equality of opportunity and treatment

21. All governments should pursue policies designed to promote equality of opportunity and treatment in employment, with a view to eliminating any discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin.⁴
22. Multinational enterprises should be guided by this general principle throughout their operations without prejudice to the measures envisaged in paragraph 18 or to government policies designed to correct historical patterns of discrimination and thereby to extend equality of opportunity and treatment in employment. Multinational enterprises should accordingly make qualifications, skill and experience the basis for the recruitment, placement, training and advancement of their staff at all levels.
23. Governments should never require or encourage multinational enterprises to discriminate on any of the grounds mentioned in paragraph 21, and continuing guidance from governments, where appropriate, on the avoidance of such discrimination in employment is encouraged.

Security of employment

24. Governments should carefully study the impact of multinational enterprises on employment in different industrial sectors. Governments, as well as multinational enterprises themselves, in all countries should take suitable measures to deal with the employment and labour market impacts of the operations of multinational enterprises.
25. Multinational enterprises equally with national enterprises, through active manpower planning, should endeavour to provide stable employment for their employees and should observe freely negotiated obligations concerning employment stability and social security. In view of the flexibility which multinational enterprises may have, they should strive to assume a leading role in promoting security of employment, particularly in countries where the discontinuation of operations is likely to accentuate long-term unemployment.
26. In considering changes in operations (including those resulting from mergers, take-overs or transfers of production) which would have major employment effects, multinational enterprises should provide reasonable notice of such changes to the appropriate government authorities and representatives of the workers in their employment and their organizations so that the implications may be examined jointly in order to mitigate adverse effects to the greatest possible extent. This is particularly important in the case of the closure of an entity involving collective lay-offs or dismissals.
27. Arbitrary dismissal procedures should be avoided.⁵
28. Governments, in cooperation with multinational as well as national enterprises, should provide some form of income protection for workers whose employment has been terminated.⁶

Training

29. Governments, in cooperation with all the parties concerned, should develop national policies for vocational training and guidance, closely linked with employment.⁷ This is the framework within which multinational enterprises should pursue their training policies.

⁴ Convention (No. 111) and Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation; Convention (No. 100) and Recommendation (No. 90) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.

⁵ Recommendation (No. 119) concerning Termination of Employment at the Initiative of the Employer.

⁶ *ibid.*

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30. In their operations, multinational enterprises should ensure that relevant training is provided for all levels of their employees in the host country, as appropriate, to meet the needs of the enterprise as well as the development policies of the country. Such training should, to the extent possible, develop generally useful skills and promote career opportunities. This responsibility should be carried out, where appropriate, in cooperation with the authorities of the country, employers' and workers' organizations and the competent local, national or international institutions.
 31. Multinational enterprises operating in developing countries should participate, along with national enterprises, in programmes, including special funds, encouraged by host governments and supported by employers' and workers' organizations. These programmes should have the aim of encouraging skill formation and development as well as providing vocational guidance, and should be jointly administered by the parties which support them. Wherever practicable, multinational enterprises should make the services of skilled resource personnel available to help in training programmes organized by governments as part of a contribution to national development.
 32. Multinational enterprises, with the cooperation of governments and to the extent consistent with the efficient operation of the enterprise, should afford opportunities within the enterprise as a whole to broaden the experience of local management in suitable fields such as industrial relations.

Conditions of work and life

Wages, benefits and conditions of work

33. Wages, benefits and conditions of work offered by multinational enterprises should be not less favourable to the workers than those offered by comparable employers in the country concerned.
34. When multinational enterprises operate in developing countries, where comparable employers may not exist, they should provide the best possible wages, benefits and conditions of work, within the framework of government policies.⁸ These should be related to the economic position of the enterprise, but should be at least adequate to satisfy basic needs of the workers and their families. Where they provide workers with basic amenities such as housing, medical care or food, these amenities should be of a good standard.⁹
35. Governments, especially in developing countries, should endeavour to adopt suitable measures to ensure that lower income groups and less developed areas benefit as much as possible from the activities of multinational enterprises.

Minimum age

36. Multinational enterprises, as well as national enterprises, should respect the minimum age for admission to employment or work in order to secure the effective abolition of child labour.¹⁰

Safety and health

37. Governments should ensure that both multinational and national enterprises provide adequate safety and health standards for their employees. Those governments which have not yet ratified the ILO

⁷ Convention (No. 142) and Recommendation (No. 150) concerning Vocational Guidance and Vocational Training in the Development of Human Resources.

⁸ Recommendation (No. 116) concerning Reduction of Hours of Work.

⁹ Convention (No. 110) and Recommendation (No. 110) concerning Conditions of Employment of Plantation Workers; Recommendation (No. 115) concerning Workers' Housing; Recommendation (No. 69) concerning Medical Care; Convention (No. 130) and Recommendation (No. 134) concerning Medical Care and Sickness Benefits.

¹⁰ Convention No. 138, Article 1; Convention No. 182, Article 1.

Conventions on Guarding of Machinery (No. 119), Ionising Radiation (No. 115), Benzene (No. 136) and Occupational Cancer (No. 139) are urged nevertheless to apply to the greatest extent possible the principles embodied in these Conventions and in their related Recommendations (Nos. 118, 114, 144 and 147). The Codes of Practice and Guides in the current list of ILO publications on Occupational Safety and Health should also be taken into account.¹¹

38. Multinational enterprises should maintain the highest standards of safety and health, in conformity with national requirements, bearing in mind their relevant experience within the enterprise as a whole, including any knowledge of special hazards. They should also make available to the representatives of the workers in the enterprise, and upon request, to the competent authorities and the workers' and employers' organizations in all countries in which they operate, information on the safety and health standards relevant to their local operations, which they observe in other countries. In particular, they should make known to those concerned any special hazards and related protective measures associated with new products and processes. They, like comparable domestic enterprises, should be expected to play a leading role in the examination of causes of industrial safety and health hazards and in the application of resulting improvements within the enterprise as a whole.
39. Multinational enterprises should cooperate in the work of international organizations concerned with the preparation and adoption of international safety and health standards.
40. In accordance with national practice, multinational enterprises should cooperate fully with the competent safety and health authorities, the representatives of the workers and their organizations, and established safety and health organizations. Where appropriate, matters relating to safety and health should be incorporated in agreements with the representatives of the workers and their organizations.

Industrial relations

41. Multinational enterprises should observe standards of industrial relations not less favourable than those observed by comparable employers in the country concerned.

Freedom of association and the right to organize

42. Workers employed by multinational enterprises as well as those employed by national enterprises should, without distinction whatsoever, have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorisation.¹² They should also enjoy adequate protection against acts of anti-union discrimination in respect of their employment.¹³
43. Organizations representing multinational enterprises or the workers in their employment should enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.¹⁴
44. Where appropriate, in the local circumstances, multinational enterprises should support representative employers' organizations.
45. Governments, where they do not already do so, are urged to apply the principles of Convention No. 87, Article 5, in view of the importance, in relation to multinational enterprises, of permitting

¹¹ The ILO Conventions and Recommendations referred to are listed in the Catalogue of ILO Publications on Occupational Safety and Health, ed. 1999, ILO Geneva. See also <<http://www.ilo.org/public/english/protection/safework/publicat/index.htm>>.

¹² Convention No. 87, Article 2.

¹³ Convention No. 98, Article 1(1).

¹⁴ Convention No. 98, Article 2(1).

organizations representing such enterprises or the workers in their employment to affiliate with international organizations of employers and workers of their own choosing.

46. Where governments of host countries offer special incentives to attract foreign investment, these incentives should not include any limitation of the workers' freedom of association or the right to organize and bargain collectively.
47. Representatives of the workers in multinational enterprises should not be hindered from meeting for consultation and exchange of views among themselves, provided that the functioning of the operations of the enterprise and the normal procedures which govern relationships with representatives of the workers and their organizations are not thereby prejudiced.
48. Governments should not restrict the entry of representatives of employers' and workers' organizations who come from other countries at the invitation of the local or national organizations concerned for the purpose of consultation on matters of mutual concern, solely on the grounds that they seek entry in that capacity.

Collective bargaining

49. Workers employed by multinational enterprises should have the right, in accordance with national law and practice, to have representative organizations of their own choosing recognized for the purpose of collective bargaining.
50. Measures appropriate to national conditions should be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.¹⁵
51. Multinational enterprises, as well as national enterprises, should provide workers' representatives with such facilities as may be necessary to assist in the development of effective collective agreements.¹⁶
52. Multinational enterprises should enable duly authorized representatives of the workers in their employment in each of the countries in which they operate to conduct negotiations with representatives of management who are authorized to take decisions on the matters under negotiation.
53. Multinational enterprises, in the context of bona fide negotiations with the workers' representatives on conditions of employment, or while workers are exercising the right to organize, should not threaten to utilize a capacity to transfer the whole or part of an operating unit from the country concerned in order to influence unfairly those negotiations or to hinder the exercise of the right to organize; nor should they transfer workers from affiliates in foreign countries with a view to undermining bona fide negotiations with the workers' representatives or the workers' exercise of their right to organize.
54. Collective agreements should include provisions for the settlement of disputes arising over their interpretation and application and for ensuring mutually respected rights and responsibilities.
55. Multinational enterprises should provide workers' representatives with information required for meaningful negotiations with the entity involved and, where this accords with local law and

¹⁵ Convention No. 98, Article 4.

¹⁶ Convention (No. 135) concerning Protection and Facilities to be Afforded to Workers' Representatives in the Undertaking.

practices, should also provide information to enable them to obtain a true and fair view of the performance of the entity or, where appropriate, of the enterprise as a whole.¹⁷

56. Governments should supply to the representatives of workers' organizations on request, where law and practice so permit, information on the industries in which the enterprise operates, which would help in laying down objective criteria in the collective bargaining process. In this context, multinational as well as national enterprises should respond constructively to requests by governments for relevant information on their operations.

Consultation

57. In multinational as well as in national enterprises, systems devised by mutual agreement between employers and workers and their representatives should provide, in accordance with national law and practice, for regular consultation on matters of mutual concern. Such consultation should not be a substitute for collective bargaining.¹⁸

Examination of grievances

58. Multinational as well as national enterprises should respect the right of the workers whom they employ to have all their grievances processed in a manner consistent with the following provision: any worker who, acting individually or jointly with other workers, considers that he has grounds for a grievance should have the right to submit such grievance without suffering any prejudice whatsoever as a result, and to have such grievance examined pursuant to an appropriate procedure.¹⁹ This is particularly important whenever the multinational enterprises operate in countries which do not abide by the principles of ILO Conventions pertaining to freedom of association, to the right to organize and bargain collectively and to forced labour.²⁰

Settlement of industrial disputes

59. Multinational as well as national enterprises jointly with the representatives and organizations of the workers whom they employ should seek to establish voluntary conciliation machinery, appropriate to national conditions, which may include provisions for voluntary arbitration, to assist in the prevention and settlement of industrial disputes between employers and workers. The voluntary conciliation machinery should include equal representation of employers and workers.²¹

Geneva, 17 November 2000

¹⁷ Recommendation (No. 129) concerning Communications between Management and Workers within the Undertaking.

¹⁸ Recommendation (No. 94) concerning Consultation and Co-operation between Employers and Workers at the Level of Undertaking; Recommendation (No. 129) concerning Communications within the Undertaking.

¹⁹ Recommendation (No. 130) concerning the Examination of Grievances within the Undertaking with a View to Their Settlement.

²⁰ Convention (No. 29) concerning Forced or Compulsory Labour; Convention (No. 105) concerning the Abolition of Forced Labour; Recommendation (No. 35) concerning Indirect Compulsion to Labour.

²¹ Recommendation (No. 92) concerning Voluntary Conciliation and Arbitration.

Appendix II

Plantations Convention, 1958 (No. 110) and its accompanying Recommendation (No. 110)

Convention No. 110 – Convention concerning Conditions of Employment of Plantation Workers*

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having considered the question of conditions of employment of plantation workers, which is the fifth item on the agenda of the session, and

Having decided that, as an exceptional measure, in order to expedite the application to plantations of certain provisions of existing Conventions, pending the more general ratification of these Conventions and the application of their provisions to all persons within their scope, and to provide for the application to plantations of certain Conventions not at present applicable thereto, it is desirable to adopt an instrument for these purposes, and

Having determined that this instrument shall take the form of an international Convention,

adopts this twenty-fourth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Plantations Convention, 1958:

PART I. GENERAL PROVISIONS

Article 1

1. For the purpose of this Convention, the term “plantation” includes any agricultural undertaking regularly employing hired workers which is situated in the tropical or subtropical regions and which is mainly concerned with the cultivation or production for commercial purposes of coffee, tea, sugarcane, rubber, bananas, cocoa, coconuts, groundnuts, cotton, tobacco, fibres (sisal, jute and hemp), citrus, palm oil, cinchona or pineapple; it does not include family or small-scale holdings producing for local consumption and not regularly employing hired workers.

2. Each Member for which this Convention is in force may, after consultation with the most representative organisations of employers and workers concerned, where such exist, make the Convention applicable to other plantations by –

- (a) adding to the list of crops referred to in paragraph 1 of this Article any one or more of the following crops: rice, chicory, cardamom, geranium and pyrethrum, or any other crop;

* Ed.: This Convention came into force on 22 January 1960. It was partially revised by the Protocol of 1982. The Convention is open to ratification either with the Protocol or separately.

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- (b) adding to the plantations covered by paragraph 1 of this Article classes of undertakings not referred to therein which, by national law or practice, are classified as plantations; and shall indicate the action taken in its annual reports upon the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation.

3. For the purpose of this Article the term “plantation” shall ordinarily include services carrying out the primary processing of the product or products of the plantation.

Article 2

Each Member which ratifies this Convention undertakes to apply its provisions equally to all plantation workers without distinction as to race, colour, sex, religion, political opinion, nationality, social origin, tribe or trade union membership.

Article 3

1. Each Member for which this Convention is in force –

(a) shall comply with –

(i) Part I;

(ii) Parts IV, IX and XI;

(iii) at least two of Parts II, III, V, VI, VII, VIII, X, XII and XIII; and

(iv) Part XIV;

(b) shall, if it has excluded one or more Parts from its acceptance of the obligations of the Convention, specify, in a declaration appended to its ratification, the Part or Parts so excluded.

2. Each Member which has made a declaration under paragraph 1(b) of this Article shall indicate in its annual reports submitted under article 22 of the Constitution of the International Labour Organisation any progress made towards the application of the excluded Part or Parts.

3. Each Member which has ratified the Convention, but has excluded any Part or Parts thereof under the provisions of the preceding paragraphs, may subsequently notify the Director-General of the International Labour Office that it accepts the obligations of the Convention in respect of any Part or Parts so excluded; such undertakings shall be deemed to be an integral part of the ratification and to have the force of ratification as from the date of notification.

Article 4

In accordance with article 19, paragraph 8, of the Constitution of the International Labour Organisation, nothing in this Convention shall affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for by the Convention.

PART II. ENGAGEMENT AND RECRUITMENT AND MIGRANT WORKERS

Article 5

For the purposes of this Part of this Convention the term “recruiting” 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.

Article 6

The recruiting of the head of a family shall not be deemed to involve the recruiting of any member of his family.

Article 7

No person or association shall engage in professional recruiting unless the said person or association has been licensed by the competent authority and is recruiting workers for a public department or for one or more specific employers or organisations of employers.

Article 8

Employers, employers’ agents, organisations of employers, organisations subsidised by employers, and the agents of organisations of employers and of organisations subsidised by employers shall only engage in recruiting if licensed by the competent authority.

Article 9

1. Recruited workers shall be brought before a public officer, who shall satisfy himself that the law and regulations concerning recruiting have been observed and, in particular, that the workers have not been subjected to illegal pressure or recruited by misrepresentation or mistake.

2. Recruited workers shall be brought before such an officer as near as may be convenient to the place of recruiting or, in the case of workers recruited in one territory for employment in a territory under a different administration, at latest at the place of departure from the territory of recruiting.

Article 10

Where the circumstances make the adoption of such a provision practicable and necessary, the competent authority shall require the issue to each recruited worker who is not engaged at or near the place of recruiting of a document in writing such as a memorandum of information, a work book or a provisional contract containing such particulars as the authority may prescribe, as for example particulars of the identity of the workers, the prospective conditions of employment, and any advances of wages made to the workers.

Article 11

1. Every recruited worker shall be medically examined.

2. Where the worker has been recruited for employment at a distance from the place of recruiting, or has been recruited in one territory for employment in a territory under a different administration, the medical examination shall take place as near as may be convenient to the place of recruiting or, in the case of workers recruited in one territory for

employment in a territory under a different administration, at latest at the place of departure from the territory of recruiting.

3. The competent authority may empower public officers before whom workers are brought in pursuance of Article 9 to authorise the departure prior to medical examination of workers in whose case they are satisfied –

- (a) that it was and is impossible for the medical examination to take place near to the place of recruiting or at the place of departure;
- (b) that the worker is fit for the journey and the prospective employment; and
- (c) that the worker will be medically examined on arrival at the place of employment or as soon as possible thereafter.

4. The competent authority may, particularly when the journey of the recruited workers is of such duration and takes place under such conditions that the health of the workers is likely to be affected, require recruited workers to be examined both before departure and after arrival at the place of employment.

5. The competent authority shall ensure that all necessary measures are taken for the acclimatisation and adaptation of recruited workers and for their immunisation against disease.

Article 12

1. The recruiter or employer shall whenever possible provide transport to the place of employment for recruited workers.

2. The competent authority shall take all necessary measures to ensure –

- (a) that the vehicles or vessels used for the transport of workers are suitable for such transport, are in good sanitary condition and are not overcrowded;
- (b) that when it is necessary to break the journey for the night suitable accommodation is provided for the workers; and
- (c) that in the case of long journeys all necessary arrangements are made for medical assistance and for the welfare of the workers.

3. When recruited workers have to make long journeys on foot to the place of employment the competent authority shall take all necessary measures to ensure –

- (a) that the length of the daily journey is compatible with the maintenance of the health and strength of the workers; and
- (b) that, where the extent of the movement of labour makes this necessary, rest camps or rest houses are provided at suitable points on main routes and are kept in proper sanitary condition and have the necessary facilities for medical attention.

4. When recruited workers have to make long journeys in groups to the place of employment, they shall be convoyed by a responsible person.

Article 13

1. The expenses of the journey of recruited workers to the place of employment, including all expenses incurred for their protection during the journey, shall be borne by the recruiter or employer.

2. The recruiter or employer shall furnish recruited workers with everything necessary for their welfare during the journey to the place of employment, including particularly, as local circumstances may require, adequate and suitable supplies of food, drinking water, fuel and cooking utensils, clothing and blankets.

Article 14

Any recruited worker who –

- (a) becomes incapacitated by sickness or accident during the journey to the place of employment,
- (b) is found on medical examination to be unfit for employment,
- (c) is not engaged after recruiting for a reason for which he is not responsible, or
- (d) is found by the competent authority to have been recruited by misrepresentation or mistake, shall be repatriated at the expense of the recruiter or employer.

Article 15

Where the families of recruited workers have been authorised to accompany the workers to the place of employment the competent authority shall take all necessary measures for safeguarding their health and welfare during the journey and more particularly –

- (a) Articles 12 and 13 of this Convention shall apply to such families;
- (b) in the event of the worker being repatriated in virtue of Article 14, his family shall also be repatriated; and
- (c) in the event of the death of the worker during the journey to the place of employment, his family shall be repatriated.

Article 16

The competent authority shall limit the amount which may be paid to recruited workers in respect of advances of wages and shall regulate the conditions under which such advances may be made.

Article 17

1. Each Member for which this Part of 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 18

Measures shall be taken as appropriate by each Member, within its jurisdiction, to facilitate the departure, journey and reception of migrants for employment on a plantation.

Article 19

Each Member for which this Part of 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 on a plantation and the members of their families authorised to accompany or join them are in reasonable health;
- (b) ensuring that migrants for employment on a plantation 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.

PART III. CONTRACTS OF EMPLOYMENT AND ABOLITION OF
PENAL SANCTIONS

Article 20

1. The law and/or regulations in force in the territory concerned shall prescribe the maximum period of service which may be stipulated or implied in any contract, whether written or oral.

2. The maximum period of service which may be stipulated or implied in any contract for employment not involving a long and expensive journey shall in no case exceed 12 months if the workers are not accompanied by their families or two years if the workers are accompanied by their families.

3. The maximum period of service which may be stipulated or implied in any contract for employment involving a long and expensive journey shall in no case exceed two years if the workers are not accompanied by their families or three years if the workers are accompanied by their families.

4. The competent authority may, after consultation with the employers' and workers' organisations representative of the interests concerned, where such exist, exclude from the application of this Part of this Convention contracts entered into between employers and non-manual workers whose freedom of choice in employment is satisfactorily safeguarded; such exclusion may apply to all plantation workers in a territory, to plantation workers engaged in the production of a particular crop, to the workers in any specified undertaking or to special groups of plantation workers.

Article 21

The competent authority in each country where there exists any penal sanction for any breach of a contract of employment by a plantation worker shall take action for the abolition of all such penal sanctions.

Article 22

Such action shall provide for the abolition of all such penal sanctions by means of an appropriate measure of immediate application.

Article 23

For the purpose of this Part of the Convention the term “breach of contract” means –

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

PART IV. WAGES

Article 24

1. The fixing of minimum wages by collective agreements freely negotiated between trade unions which are representative of the workers concerned and employers or employers’ organisations shall be encouraged.

2. Where no adequate arrangements exist for the fixing of minimum wages by collective agreement, the necessary arrangements shall be made whereby minimum rates of wages can be fixed, where appropriate by means of national laws or regulations, in consultation with representatives of the employers and workers, including representatives of their respective organisations, where such exist, such consultation to be on a basis of complete equality.

3. Minimum rates of wages which have been fixed in accordance with arrangements made in pursuance of the preceding paragraph shall be binding on the employers and workers concerned so as not to be subject to abatement.

Article 25

1. Each Member for which this Convention is in force shall take the necessary measures to ensure that the employers and workers concerned are informed of the minimum rates of wages in force and that wages are not paid at less than these rates in cases where they are applicable; these measures shall include such provision for supervision, inspection, and sanctions as may be necessary and appropriate to the conditions obtaining on plantations in the country concerned.

2. A worker to whom the minimum rates are applicable and who has been paid wages at less than these rates shall be entitled to recover, by judicial or other appropriate proceedings, the amount by which he has been underpaid, subject to such limitations of time as may be determined by national laws or regulations.

Article 26

Wages payable in money shall be paid only in legal tender, and payment in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender, shall be prohibited.

Article 27

1. National laws or regulations, collective agreements or arbitration awards may authorise the partial payment of wages in the form of allowances in kind where payment in the form of such allowances is customary or desirable; the payment of wages in the form

of liquor of high alcoholic content or of noxious drugs shall not be permitted in any circumstances.

2. In cases in which partial payment of wages in the form of allowances in kind is authorised, appropriate measures shall be taken to ensure that such allowances are appropriate for the personal use and benefit of the worker and his family.

3. Where food, housing, clothing and other essential supplies and services form part of remuneration, all practicable steps shall be taken to ensure that they are adequate and their cash value properly assessed.

Article 28

Wages shall be paid directly to the worker concerned except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award or where the worker concerned has agreed to the contrary.

Article 29

Employers shall be prohibited from limiting in any manner the freedom of the worker to dispose of his wages.

Article 30

1. Where works stores for the sale of commodities to the workers are established or services are operated in connection with an undertaking, the workers concerned shall be free from any coercion to make use of such stores or services.

2. Where access to other stores or services is not possible, the competent authority shall take appropriate measures with the object of ensuring that goods are sold and services provided at fair and reasonable prices, or that stores established and services operated by the employer are not operated for the purpose of securing a profit but for the benefit of the workers concerned.

Article 31

1. Deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award.

2. Workers shall be informed, in the manner deemed most appropriate by the competent authority, of the conditions under which and the extent to which such deductions may be made.

Article 32

Any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited.

Article 33

1. Wages shall be paid regularly. Except where other appropriate arrangements exist which ensure the payment of wages at regular intervals, the intervals for the payment of wages shall be prescribed by national laws or regulations or fixed by collective agreement or arbitration award.

2. Upon the termination of a contract of employment, a final settlement of all wages due shall be effected in accordance with national laws or regulations, collective agreement or arbitration award or, in the absence of any applicable law, regulation, agreement or award, within a reasonable period of time having regard to the terms of the contract.

Article 34

Where necessary, effective measures shall be taken to ensure that workers are informed, in an appropriate and easily understandable manner –

- (a) before they enter employment and when any changes take place, of the conditions in respect of wages under which they are employed; and
- (b) at the time of each payment of wages, of the particulars of their wages for the pay period concerned, in so far as such particulars may be subject to change.

Article 35

The laws or regulations giving effect to the provisions of Articles 26 to 34 of this Convention shall –

- (a) be made available for the information of persons concerned;
- (b) define the persons responsible for compliance therewith;
- (c) prescribe adequate penalties or other appropriate remedies for any violation thereof;
- (d) provide for the maintenance, in all appropriate cases, of adequate records in an approved form and manner.

PART V. ANNUAL HOLIDAYS WITH PAY

Article 36

Workers employed on plantations shall be granted an annual holiday with pay after a period of continuous service with the same employer.

Article 37

1. Each Member for which this Part of this Convention is in force shall be free to decide the manner in which provision shall be made for holidays with pay on plantations.

2. Such provision may be made, where appropriate, by means of collective agreement or by entrusting the regulation of holidays with pay on plantations to special bodies.

3. Wherever the manner in which provision is made for holidays with pay on plantations permits –

- (a) there shall be full preliminary consultation with the most representative organisations of employers and workers concerned, where such exist, and with any other persons, specially qualified by their trade or functions, whom the competent authority deems it useful to consult;
- (b) the employers and workers concerned shall participate in the regulation of holidays with pay, or be consulted or have the right to be heard, in such manner and to such extent as may be determined by national laws or regulations, but in any case on a basis of complete equality.

Article 38

The required minimum period of continuous service and the minimum duration of the annual holiday with pay shall be determined by national laws or regulations, collective agreement or arbitration award, or by special bodies entrusted with the regulation of holidays with pay on plantations, or in any other manner approved by the competent authority.

Article 39

Where appropriate, provision shall be made, in accordance with the established procedure for the regulation of holidays with pay on plantations, for –

- (a) more favourable treatment for young workers, in cases in which the annual holiday with pay granted to adult workers is not considered adequate for young workers;
- (b) an increase in the duration of the annual paid holiday with the length of service;
- (c) proportionate holidays or payment in lieu thereof, in cases where the period of continuous service of a worker is not of sufficient duration to qualify him for an annual holiday with pay but exceeds such minimum period as may be determined in accordance with the established procedure;
- (d) the exclusion from the annual holiday with pay of public and customary holidays and weekly rest periods, and, to such extent as may be determined in accordance with the established procedure, temporary interruptions of attendance at work due to such causes as sickness or accident.

Article 40

1. Every person taking a holiday in virtue of this Part of this Convention shall receive, in respect of the full period of the holiday, not less than his usual remuneration, or such remuneration as may be prescribed in accordance with paragraphs 2 and 3 of this Article.

2. The remuneration payable in respect of the holiday shall be calculated as prescribed by national laws or regulations, collective agreement or arbitration award, or by special bodies entrusted with the regulation of holidays with pay on plantations, or in any other manner approved by the competent authority.

3. Where the remuneration of the person taking a holiday includes payments in kind, provision may be made for the payment in respect of holidays of the cash equivalent of such payments in kind.

Article 41

Any agreement to relinquish the right to an annual holiday with pay, or to forgo such a holiday, shall be void.

Article 42

A person who is dismissed or who has relinquished his employment before he has taken the whole or any part of the holiday due to him shall receive in respect of every day of holiday due to him in virtue of this Part of this Convention the remuneration provided for in Article 40.

PART VI. WEEKLY REST

Article 43

1. Plantation workers shall, except as otherwise provided for by the following Articles, enjoy in every period of seven days a period of rest comprising at least 24 consecutive hours.
2. This period of rest shall, wherever possible, be granted simultaneously to all the workers of each plantation.
3. It shall, wherever possible, be fixed so as to coincide with the days already established by the traditions or customs of the country or district.

Article 44

1. Each Member may authorise total or partial exceptions (including suspensions or diminutions) from the provisions of Article 43, special regard being had to all proper humanitarian and economic considerations and after consultation with responsible associations of employers and workers, wherever such exist.
2. Such consultation shall not be necessary in the case of exceptions which have already been made under existing legislation.

Article 45

Each Member shall make, as far as possible, provision for compensatory periods of rest for the suspensions or diminutions made in virtue of Article 44, except in cases where agreements or customs already provide for such periods.

PART VII. MATERNITY PROTECTION

Article 46

For the purpose of this Part of this Convention, the term “woman” means any female person, irrespective of age, nationality, race or creed whether married or unmarried, and the term “child” means any child whether born of marriage or not.

Article 47

1. A woman to whom this Part of this Convention applies shall, on the production of appropriate evidence of the presumed date of her confinement, be entitled to a period of maternity leave.
2. The competent authority may, after consultation with the most representative organisations of employers and workers, where such exist, prescribe a qualifying period for maternity leave which shall not exceed a total of 150 days of employment with the same employer during the 12 months preceding the confinement.
3. The period of maternity leave shall be at least 12 weeks, and shall include a period of compulsory leave after confinement.
4. The period of compulsory leave after confinement shall be prescribed by national laws or regulations, but shall in no case be less than six weeks; the remainder of the total period of maternity leave may be provided before the presumed date of confinement or following expiration of the compulsory leave period or partly before the presumed date of

confinement and partly following the expiration of the compulsory leave period as may be prescribed by national laws or regulations.

5. The leave before the presumed date of confinement shall be extended by any period elapsing between the presumed date of confinement and the actual date of confinement, and the period of compulsory leave to be taken after confinement shall not be reduced on that account.

6. In case of illness suitably certified as arising out of pregnancy national laws or regulations shall provide for additional leave before confinement, the maximum duration of which may be fixed by the competent authority.

7. In case of illness suitably certified as arising out of confinement the woman shall be entitled to an extension of the leave after confinement, the maximum duration of which may be fixed by the competent authority.

8. No pregnant woman shall be required to undertake any type of work harmful to her in the period prior to her maternity leave.

Article 48

1. While absent from work on maternity leave in accordance with the provisions of Article 47, the woman shall be entitled to receive cash and medical benefits.

2. The rates of cash benefit shall be fixed by national laws or regulations so as to ensure benefits sufficient for the full and healthy maintenance of herself and her child in accordance with a suitable standard of living.

3. Medical benefits shall include prenatal, confinement and postnatal care by qualified midwives or medical practitioners as well as hospitalisation care where necessary: freedom of choice of doctor and freedom of choice between a public and private hospital shall be respected as far as practicable.

4. Any contribution due under a compulsory social insurance scheme providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits shall, whether paid both by the employer and the employees or by the employer, be paid in respect of the total number of men and women employed by the undertakings concerned, without distinction of sex.

Article 49

1. If a woman is nursing her child she shall be entitled to interrupt her work for this purpose, under conditions to be prescribed by national laws or regulations.

2. Interruptions of work for the purpose of nursing are to be counted as working hours and remunerated accordingly in cases in which the matter is governed by or in accordance with laws and regulations; in cases in which the matter is governed by collective agreement, the position shall be as determined by the relevant agreement.

Article 50

1. While a woman is absent from work on maternity leave in accordance with the provisions of Article 47, it shall not be lawful for her employer to give her notice of dismissal during such absence, or to give her notice of dismissal at such time that the notice would expire during such absence.

2. The dismissal of a woman solely because she is pregnant or a nursing mother shall be prohibited.

PART VIII. WORKMEN'S COMPENSATION

Article 51

Each Member of the International Labour Organisation for which this Part of this Convention is in force undertakes to extend to all plantation workers its laws and regulations which provide for the compensation of workers for personal injury by accident arising out of or in the course of their employment.

Article 52

1. Each Member for which this Part of this Convention is in force undertakes to grant to the nationals of any other Member for which this Part of this Convention is in force, who suffer personal injury due to industrial accidents happening in its territory, or to their dependants, the same treatment in respect of workmen's compensation as it grants to its own nationals.

2. This equality of treatment shall be guaranteed to foreign workers and their dependants without any condition as to residence. With regard to the payments which a Member or its nationals would have to make outside that Member's territory in the application of this principle, the measures to be adopted shall be regulated, if necessary, by special arrangements between the Members concerned.

Article 53

Special agreements may be made between the Members concerned to provide that compensation for industrial accidents happening to workers whilst temporarily or intermittently employed in the territory of one Member on behalf of an undertaking situated in the territory of another Member shall be governed by the laws and regulations of the latter Member.

PART IX. RIGHT TO ORGANISE AND COLLECTIVE BARGAINING

Article 54

The right of employers and employed alike to associate for all lawful purposes shall be guaranteed by appropriate measures.

Article 55

All procedures for the investigation of disputes between employers and workers shall be as simple and expeditious as possible.

Article 56

1. Employers and workers shall be encouraged to avoid disputes and, if they arise, to reach fair settlements by means of conciliation.

2. For this purpose all practicable measures shall be taken to consult and associate the representatives of organisations of employers and workers in the establishment and working of conciliation machinery.

3. Subject to the operation of such machinery, public officers shall be responsible for the investigation of disputes and shall endeavour to promote conciliation and to assist the parties in arriving at a fair settlement.

4. Where practicable, these officers shall be officers specially assigned to such duties.

Article 57

1. Machinery shall be created as rapidly as possible for the settlement of disputes between employers and workers.

2. Representatives of the employers and workers concerned, including representatives of their respective organisations, where such exist, shall be associated where practicable in the operation of the machinery, in such manner and to such extent, but in any case in equal numbers and on equal terms, as may be determined by the competent authority.

Article 58

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to –

- (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
- (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 59

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 60

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 61

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

PART X. FREEDOM OF ASSOCIATION

Article 62

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 63

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 64

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 65

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 66

The provisions of Articles 62, 63 and 64 apply to federations and confederations of workers' and employers' organisations.

Article 67

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 62, 63 and 64.

Article 68

1. In exercising the rights provided for in this Part of this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Part of this Convention.

Article 69

In this Part of this Convention the term "organisation" means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

Article 70

Each Member for which this Part of this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

PART XI. LABOUR INSPECTION

Article 71

Each Member for which this Convention is in force shall maintain a system of labour inspection.

Article 72

Labour inspection services shall consist of suitably trained inspectors.

Article 73

Workers and their representatives shall be afforded every facility for communicating freely with the inspectors.

Article 74

1. The functions of the system of labour inspection shall be –
 - (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as provisions relating to hours, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by labour inspectors;
 - (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;
 - (c) to bring to the notice of the competent authority defects or abuses not specifically covered by existing legal provisions.
2. Any further duties which may be entrusted to labour inspectors shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

Article 75

The competent authority shall make appropriate arrangements to promote –

- (a) effective co-operation between the inspection services and other government services and public or private institutions engaged in similar activities; and
- (b) collaboration between officials of the labour inspectorate and employers and workers or their organisations.

Article 76

The inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

Article 77

1. The competent authority shall make the necessary arrangements to furnish labour inspectors with –

- (a) local offices, suitably equipped in accordance with the requirements of the service, and accessible to all persons concerned;
- (b) the transport facilities necessary for the performance of their duties in cases where suitable public facilities do not exist.

2. The competent authority shall make the necessary arrangements to reimburse to labour inspectors any travelling and incidental expenses which may be necessary for the performance of their duties.

Article 78

1. Labour inspectors provided with proper credentials shall be empowered –

- (a) to enter freely and without previous notice at any hour of the day or night any place of employment liable to inspection;
- (b) to enter by day any premises which they may have reasonable cause to believe to be liable to inspection; and
- (c) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed and, in particular –
 - (i) to interrogate, alone or in the presence of witnesses, the employer or the staff of the undertaking on any matters concerning the application of the legal provisions;
 - (ii) to require the production of any books, registers or other documents the keeping of which is prescribed by national laws or regulations relating to conditions of work, in order to see that they are in conformity with the legal provisions and to copy such documents or make extracts from them;
 - (iii) to enforce the posting of notices required by the legal provisions;
 - (iv) to take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purpose.

2. On the occasion of an inspection visit inspectors shall notify the employer or his representative of their presence, unless they consider that such a notification may be prejudicial to the performance of their duties.

Article 79

Subject to such exceptions as may be made by law or regulation, labour inspectors –

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- (a) shall be prohibited from having any direct or indirect interest in the undertakings under their supervision;
 - (b) shall be bound on pain of appropriate penalties or disciplinary measures not to reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties; and
 - (c) shall treat as absolutely confidential the source of any complaint bringing to their notice a defect or breach of legal provisions and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such a complaint.

Article 80

The labour inspectorate shall be notified of industrial accidents and cases of occupational disease in such cases and in such manner as may be prescribed by national laws or regulations.

Article 81

Places of employment shall be inspected as often and as thoroughly as is necessary to ensure the effective application of the relevant legal provisions.

Article 82

1. Persons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning: Provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.

2. It shall be left to the discretion of labour inspectors to give warning and advice instead of instituting or recommending proceedings.

Article 83

Adequate penalties for violations of the legal provisions enforceable by labour inspectors and for obstructing labour inspectors in the performance of their duties shall be provided for by national laws or regulations and effectively enforced.

Article 84

1. Labour inspectors or local inspection offices, as the case may be, shall be required to submit to the central inspection authority periodical reports on the results of their inspection activities.

2. These reports shall be drawn up in such manner and deal with such subjects as may from time to time be prescribed by the central authority; they shall be submitted at least as frequently as may be prescribed by that authority and in any case not less frequently than once a year.

PART XII. HOUSING

Article 85

The appropriate authorities shall, in consultation with the representatives of the employers' and workers' organisations concerned, where such exist, encourage the provision of adequate housing accommodation for plantation workers.

Article 86

1. The minimum standards and specifications of the accommodation to be provided in accordance with the preceding Article shall be laid down by the appropriate public authority. The latter shall, wherever practicable, constitute advisory boards consisting of representatives of employers and workers for consultation in regard to matters connected with housing.

2. Such minimum standards shall include specifications concerning –

- (a) the construction materials to be used;
- (b) the minimum size of accommodation, its layout, ventilation, and floor and air space;
- (c) verandah space, cooking, washing, storage, water supply and sanitary facilities.

Article 87

Adequate penalties for violations of the legal provisions made in accordance with the preceding Article shall be provided for by laws or regulations and effectively enforced.

Article 88

1. Where housing is provided by the employer the conditions under which plantation workers are entitled to occupancy shall be not less favourable than those established by national custom or national legislation.

2. Whenever a resident worker is discharged he shall be allowed a reasonable time in which to vacate the house. Where the time allowed is not fixed by law it shall be determined by recognised negotiating machinery, or, failing agreement on the subject, by recourse to the normal procedure of the civil courts.

PART XIII. MEDICAL CARE

Article 89

The appropriate authorities shall, in consultation with the representatives of the employers' and workers' organisations concerned, where such exist, encourage the provision of adequate medical services for plantation workers and members of their families.

Article 90

1. Medical services shall be of a standard prescribed by the public authorities, shall be adequate having regard to the number of persons involved, and shall be operated by a sufficient number of qualified personnel.

2. Such services where provided by the appropriate public authorities shall conform to the standards, customs and practices of the authority concerned.

Article 91

The appropriate authority, in consultation with the representatives of the employers' and workers' organisations concerned, where such exist, shall take steps in plantation areas to eradicate or control prevalent endemic diseases.

PART XIV. FINAL PROVISIONS

Article 92

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

Article 93

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. This Convention shall come into force six months after the date on which there have been registered ratifications, in conformity with Article 3, of two of the following countries: Argentina, Belgium, Bolivia, Brazil, Burma, Ceylon, China, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Ethiopia, France, Ghana, Guatemala, Haiti, Honduras, India, Indonesia, Italy, Liberia, Federation of Malaya, Mexico, Netherlands, Nicaragua, Pakistan, Panama, Peru, Philippines, Portugal, El Salvador, Spain, Sudan, Thailand, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America and Viet-Nam.

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

Article 94

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

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

Article 95

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 96

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 97

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 98

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 94 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 99

The English and French versions of the text of this Convention are equally authoritative.

Protocol to the Plantations Convention, 1958

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-eighth Session on 2 June 1982, and

Having decided upon the adoption of certain proposals with regard to the revision of the Plantations Convention and Recommendation, 1958, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of a Protocol limited to the revision of the relevant provisions of the Plantations Convention, 1958,

adopts this eighteenth day of June of the year one thousand nine hundred and eighty-two in accordance with the provisions of article 19 of the Constitution of the International Labour Organisation relating to Conventions, the following Protocol, which may be cited as the Protocol to the Plantations Convention, 1958.

Article 1

A Member may, by a declaration appended to its ratification of the Plantations Convention, 1958, specify that it ratifies the Convention with the substitution for Article 1 thereof of the following text:

“Article 1 (revised)

1. For the purpose of this Convention, the term ‘plantation’ includes any agricultural undertaking regularly employing hired workers which is situated in the tropical or subtropical regions and which is mainly concerned with the cultivation or production for commercial purposes of coffee, tea, sugar-cane, rubber, bananas, cocoa, coconuts, groundnuts, cotton, tobacco, fibres (sisal, jute and hemp), citrus, palm oil, cinchona or pineapple; it does not include family or small-scale holdings producing for local consumption and not regularly employing hired workers.

2. A Member ratifying this Convention may, after consultation with the most representative organisations of employers and workers concerned, where such exist, exclude from the application of the Convention undertakings the area of which covers not more than 12.5 acres (5 hectares) and which employ not more than ten workers at any time during a calendar year. It shall indicate, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, the categories of undertakings excluded and, in subsequent reports, any measures which it may have taken with a view to applying the Convention to some or all of the categories excluded, as well as any measures which it may have taken with a view to ensuring that the Convention continues to be applied to undertakings which come within the exclusion provided for in this paragraph but which have been created by the division of a plantation after the entry into force of Article 1 (revised) for the Member concerned.

3. Each Member for which this Convention is in force may, after consultation with the most representative organisations of employers and workers concerned, where such exist, make the Convention applicable to other plantations by –

- (a) adding to the list of crops referred to in paragraph 1 of this Article any one or more of the following crops: rice, chicory, cardamom, geranium and pyrethrum, or any other crop;

-
- (b) adding to the plantations covered by paragraph 1 of this Article classes of undertakings not referred to therein which, by national law or practice, are classified as plantations;

and shall indicate the action taken in its annual reports on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation.

4. For the purpose of this Article the term ‘plantation’ shall ordinarily include services carrying out the primary processing of the product or products of the plantation, on or in close proximity to the site of the latter.”

Article 2

1. A Member already a party to the Plantations Convention, 1958, may, by communicating its formal ratification of this Protocol to the Director-General of the International Labour Office for registration, accept the revised text of Article 1 of the Convention set out in Article 1 of this Protocol. Such ratification shall take effect twelve months after the date on which it has been registered by the Director-General. Thereafter the Convention shall be binding on the Member concerned with the substitution of the revised text of Article 1 for the original text of that Article.

2. The reference in paragraph 2 of the revised text of Article 1 of the Convention to the first report on the application of the Convention shall be construed, in the case of a Member already a party to the Convention, as a reference to its first report submitted after the coming into force of this Protocol for the Member concerned.

3. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications of this Protocol communicated to him by parties to the Convention.

4. The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications registered by him in accordance with the provisions of paragraph 1 of this Article.

Article 3

The English and French versions of the text of this Protocol are equally authoritative.

**Recommendation No. 110 –
Recommendation concerning Conditions of
Employment of Plantation Workers**

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals concerning the conditions of employment of plantation workers, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this twenty-fourth day of June of the year one thousand nine hundred and fifty-eight the following Recommendation, which may be cited as the Plantations Recommendation, 1958:

The Conference recommends that each Member should apply the following provisions:

I. PRELIMINARY PROVISIONS

1. (1) For the purpose of this Recommendation, the term “plantation” includes any agricultural undertaking regularly employing hired workers which is situated in the tropical or subtropical regions and which is mainly concerned with the cultivation or production for commercial purposes of coffee, tea, sugarcane, rubber, bananas, cocoa, coconuts, groundnuts, cotton, tobacco, fibres (sisal, jute and hemp), citrus, palm oil, cinchona or pineapple; it does not include family or small-scale holdings producing for local consumption and not regularly employing hired workers.

(2) Each Member may, after consultation with the most representative organisations of employers and workers concerned, where such exist, make the Recommendation applicable to other plantations by –

- (a) adding to the list of crops referred to in subparagraph (1) of this Paragraph any one or more of the following crops: rice, chicory, cardamom, geranium and pyrethrum, or any other crop;
- (b) adding to the plantations covered by subparagraph (1) of this Paragraph classes of undertakings not referred to therein which, by national law or practice, are classified as plantations;

and should inform the Director-General of the International Labour Office of the action taken under this subparagraph in its reports submitted in accordance with article 19, paragraph 6, of the Constitution of the International Labour Organisation.

(3) For the purpose of this Paragraph the term “plantation” ordinarily includes services carrying out the primary processing of the product or products of the plantation.

2. Each Member should apply the provisions of this Recommendation equally to all plantation workers without distinction as to race, colour, sex, religion, political opinion, nationality, social origin, tribe or trade union membership.

3. Each Member of the International Labour Organisation should report to the International Labour Office, at appropriate intervals, as requested by the Governing Body, the position of the law and practice in the countries and territories for which the Member is

responsible in regard to the matters dealt with in the Recommendation. Such reports should show the extent to which effect has been given, or is proposed to be given, to the provisions of this Recommendation and such modification of those provisions as it has been found or may be found necessary to make in adopting or applying them.

4. In accordance with article 19, paragraph 8, of the Constitution of the International Labour Organisation, nothing in this Recommendation affects any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in this Recommendation.

II. VOCATIONAL TRAINING

5. In each country the public authorities, other appropriate bodies, or a combination of both, should ensure that vocational training is provided and organised in an effective, rational, systematic and co-ordinated programme.

6. (1) In underdeveloped areas lacking training facilities one of the first steps should be the creation of a body of trained teachers and instructors.

(2) Even where such trained teachers and instructors are not available all possible assistance should be given to the development of training facilities on plantations where the operator is adequately qualified to provide practical instruction.

7. Responsibility for the training programmes should be entrusted to the authority or authorities capable of obtaining the best results and, in cases where the responsibility is entrusted to several authorities jointly, measures for ensuring co-ordination of the training programmes should be taken. Local authorities should collaborate in the development of the training programmes. Close collaboration should be maintained with the organisations of employers and workers concerned and with other interested organisations, where such exist.

8. While local financial contributions to training programmes are in many places called for, the public authorities, to the extent considered appropriate and necessary, should also assist public and private training programmes in such ways as: making available financial contributions; contributing land, buildings, transport, equipment and teaching material; contributing through scholarships or otherwise to the living expenses or wages of trainees during the course of training, and making entry into residential plantation schools free of charge to appropriately qualified trainees, especially those who cannot afford to pay for the training.

III. WAGES

9. The maximum intervals for the payment of wages should ensure that wages are paid –

- (a) not less often than twice a month at intervals not exceeding 16 days in the case of workers whose wages are calculated by the hour, day or week; and
- (b) not less often than once a month in the case of employed persons whose remuneration is fixed on a monthly or annual basis.

10. (1) In the case of workers whose wages are calculated on a piece-work or output basis, the maximum intervals for the payment of wages should, so far as possible, be so fixed as to ensure that wages are paid not less often than twice a month at intervals not exceeding 16 days.

(2) In the case of workers employed to perform a task the completion of which requires more than a fortnight, and in respect of whom intervals for the payment of wages are not otherwise fixed by collective agreement or arbitration award, appropriate measures should be taken to ensure –

- (a) that payments are made on account, not less often than twice a month at intervals not exceeding 16 days, in proportion to the amount of work completed; and
- (b) that final settlement is made within a fortnight of the completion of the task.

11. The details of the wages conditions which should be brought to the knowledge of the workers should include, wherever appropriate, particulars concerning –

- (a) the rates of wages payable;
- (b) the method of calculation;
- (c) the periodicity of wage payments;
- (d) the place of payment; and
- (e) the conditions under which deductions may be made.

12. In all appropriate cases workers should be informed, with each payment of wages, of the following particulars relating to the pay period concerned, in so far as such particulars may be subject to change:

- (a) the gross amount of wages earned;
- (b) any deduction which may have been made, including the reasons therefor and the amount thereof; and
- (c) the net amount of wages due.

13. Employers should be required in appropriate cases to maintain records showing, in respect of each worker employed, the particulars specified in the preceding Paragraph.

14. (1) The necessary measures should be taken to ensure the proper payment of all wages earned and employers should be required to keep registers of wage payments, to issue to workers statements of wage payments and to take other appropriate steps to facilitate the necessary supervision.

(2) Wages should normally be paid in cash only and direct to the individual worker.

(3) Unless there is an established local custom to the contrary, the continuance of which is desired by the workers, wages should be paid regularly at such intervals as will lessen the likelihood of indebtedness among the wage earners.

(4) Where food, housing, clothing and other essential supplies and services form part of remuneration, all practicable steps should be taken by the competent authority to control strictly their adequacy and their cash value.

(5) All practicable measures should be taken –

- (a) to inform the workers of their wage rights;
- (b) to prevent any unauthorised deductions from wages; and

(c) to restrict the amounts deductible from wages in respect of supplies and services forming part of remuneration to the cash value thereof.

15. (1) Voluntary forms of thrift among wage earners should be encouraged.

(2) The maximum amounts and manner of repayment of advances on wages should be regulated by the competent authority.

(3) The competent authority should limit the amount of advances which may be paid to a worker who has been engaged from outside the territory. The amount of any such advances should be clearly explained to the worker. Any advance made in excess of the amount laid down by the competent authority should be irrecoverable at law.

(4) All practicable measures should be taken for the protection of wage earners against usury, in particular by action aiming at the reduction of rates of interest on loans, by the control of the operations of money-lenders, and by the encouragement of facilities for borrowing money for appropriate purposes through co-operative credit organisations or through institutions which are under the control of the competent authority.

16. For the purpose of determining minimum rates of wages to be fixed it is desirable that the wage-fixing body should in any case take account of the necessity of enabling the workers concerned to maintain a suitable standard of living.

17. Among the factors which should be taken into consideration in the fixing of minimum wage rates are the following: the cost of living, fair and reasonable value of services rendered, wages paid for similar or comparable work under collective bargaining agreements, and the general level of wages for work of a comparable skill in the area where the workers are sufficiently organised.

18. Whatever form it may assume, the minimum wage fixing machinery should operate by way of investigation into conditions on plantations and consultation with the parties who are primarily and principally concerned, namely employers and workers, or their most representative organisations, where such exist. The opinion of both parties should be sought on all questions concerning minimum wage fixing and full and equal consideration given to their opinion.

19. To secure greater authority for the rates that may be fixed, in cases where the machinery adopted for fixing minimum wages makes it possible, the workers and employers concerned should be enabled to participate directly and on an equal footing in the operation of such machinery through their representatives, who should be equal in number or in any case have an equal number of votes.

20. In order that the employers' and workers' representatives should enjoy the confidence of those whose interest they respectively represent, in the case referred to in Paragraph 19 above, the employers and workers concerned should have the right, in so far as circumstances permit, to participate in the nomination of the representatives, and, if any organisations of employers and workers exist, these should in any case be invited to submit names of persons recommended by them for appointment on the wage-fixing body.

21. In the case where the machinery for minimum wage fixing provides for the participation of independent persons, whether for arbitration or otherwise, these should be chosen from among men or women who are recognised as possessing the necessary qualifications for their duties and who have no such interest in plantations and related undertakings as would give rise to doubt as to their impartiality.

22. Provision should be made for a procedure for revising minimum wage rates at appropriate intervals.

23. For effectively protecting the wages of the workers concerned, the measures to be taken to ensure that wages are not paid at less than the minimum rates which have been fixed should include –

- (a) arrangements for giving publicity to the minimum wage rates in force, and in particular for informing the employers and workers concerned of these rates in the manner most appropriate to national circumstances;
- (b) official supervision of the rates actually being paid; and
- (c) penalties for infringements of the rates in force and measures for preventing such infringements.

24. All necessary measures should be taken to limit deductions from wages to the extent deemed to be necessary to safeguard the maintenance of the worker and his family.

25. (1) Deductions from wages for the reimbursement of loss of or damage to the products, goods or installations of the employer should be authorised only when loss or damage has been caused for which the worker concerned can be clearly shown to be responsible.

(2) The amount of such deductions should be fair and should not exceed the actual amount of the loss or damage.

(3) Before a decision to make such a deduction is taken, the worker concerned should be given a reasonable opportunity to show cause why the deduction should not be made.

26. Appropriate measures should be taken to limit deductions from wages in respect of tools, materials or equipment supplied by the employer to cases in which such deductions –

- (a) are a recognised custom of the trade or occupation concerned; or
- (b) are provided for by collective agreement or arbitration award; or
- (c) are otherwise authorised by a procedure recognised by national laws or regulations.

IV. EQUAL REMUNERATION

27. (1) Each Member should, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

(2) This principle may be applied by means of –

- (a) national laws or regulations;
- (b) legally established or recognised machinery for wage determination;
- (c) collective agreements between employers and workers; or
- (d) a combination of these various means.

V. HOURS OF WORK AND OVERTIME

28. The provisions of this Part apply to workers employed on a time basis.

29. The hours of work of any person employed on a plantation covered by Paragraph 1 above should not exceed eight in the day and 48 in the week, with the exceptions hereinafter provided for:

- (a) the provisions of this Part do not apply to persons holding positions of supervision or management;
- (b) where by law, custom, or agreement between employers' and workers' organisations, or where no such organisations exist, between employers' and workers' representatives, the hours of work on one or more days of the week are less than eight, the limit of eight hours may be exceeded on the remaining days of the week by the sanction of the competent public authority, or by agreement between such organisations or representatives: Provided, however, that in no case under the provisions of this Paragraph should the daily limit of eight hours be exceeded by more than one hour;
- (c) where persons are employed in shifts it should be permissible to employ persons in excess of eight hours in any one day and 48 hours in any one week, if the average number of hours over a period of three weeks or less does not exceed eight per day and 48 per week.

30. The limit of hours of work prescribed in Paragraph 29 may be exceeded in case of accident, actual or threatened, or in case of urgent work to be done to machinery or plant, or in case of force majeure, but only so far as may be necessary to avoid serious interference with the ordinary working of the undertaking. That limit may also be exceeded in order to prevent the loss of perishable goods or materials subject to rapid deterioration.

31. The limit of hours of work prescribed in Paragraph 29 may also be exceeded in those processes which are required by reason of the nature of the process to be carried on continuously by a succession of shifts, subject to the condition that the working hours should not exceed 56 in the week on the average. Such regulation of the hours of work should in no case affect any rest days which may be secured by the national law to the workers in such processes in compensation for the weekly rest day.

32. (1) Regulations made by public authority should determine for plantations –

- (a) the permanent exceptions that may be allowed in preparatory or complementary work which must necessarily be carried on outside the limits laid down for the general working of a plantation, or for seasonal or certain other classes of work which is essentially intermittent;
- (b) the temporary exceptions that may be allowed to deal with exceptional cases of pressure of work.

(2) These regulations should be made only after consultation with the organisations of employers and workers concerned, if any such organisations exist. These regulations should fix the maximum of additional hours in each instance.

33. The rate of pay for any hours in excess of the hours of work provided for in Paragraph 29 worked in conformity with Paragraphs 30, 31 and 32 should not be less than one and one-quarter times the regular rate.

VI. WELFARE FACILITIES

34. Having regard to the variety of welfare facilities and of national practices in making provision for them, the facilities specified in this Part of this Recommendation may be provided by means of public or voluntary action –

- (a) through laws and regulations, or
- (b) in any other manner approved by the competent authority after consultation with employers' and workers' organisations, or
- (c) by virtue of collective agreement or as otherwise agreed upon by the employers and workers concerned.

35. In localities where there are insufficient facilities for purchasing appropriate food, beverages and meals, measures should be taken to provide workers with such facilities.

36. The workers should in no case be compelled, except as required by national laws and regulations for reasons of health, to use any of the feeding facilities provided.

37. (1) Appropriate measures should be taken to encourage the provision of recreation facilities for the workers in or near the undertaking in which they are employed, where suitable facilities organised by special bodies or by community action are not already available and where there is a real need for such facilities as indicated by the representatives of the workers concerned.

(2) Such measures, where appropriate, should be taken by bodies established by national laws or regulations if these have a responsibility in this field, or by voluntary action of the employers or workers concerned after consultation with each other. These measures should preferably be taken in such a way as to stimulate and support action by the public authorities so that the community is able to meet the demand for recreation facilities.

38. Whatever may be the methods adopted for providing recreation facilities, the workers should in no case be under any obligation to participate in the utilisation of any of the facilities provided.

39. The competent authorities of each country should arrange for the consultation of workers' and employers' organisations concerning both the methods of administration and the supervision of the welfare facilities set up by virtue of national laws or regulations.

40. In the economically underdeveloped countries, in the absence of other legal obligations concerning welfare facilities, such facilities may be financed through welfare funds maintained by contributions fixed by the competent authorities and administered by committees with equal representation of employers and workers.

41. (1) Where meals and other food supplies are made available to the workers directly by the employer, their prices should be reasonable and they should be provided without profit to the employer; any possible financial surplus resulting from the sale should be paid into a fund or special account and used, according to circumstances, either to offset losses or to improve the facilities made available to the workers.

(2) Where meals and other food supplies are made available to the workers by a caterer or contractor, their prices should be reasonable and they should be provided without profit to the employer.

(3) Where the facilities in question are provided by virtue of collective agreements or by special agreements within undertakings, the fund provided for in subparagraph (1) should be administered either by a joint body or by the workers.

42. (1) In no case should a worker be required to contribute towards the cost of welfare facilities that he does not wish to use personally.

(2) In cases where workers have to pay for welfare facilities payment by instalment or delay in payment should not be permitted.

43. Where a substantial proportion of the workers experience special difficulties in travelling to and from work owing to the inadequacy of public transport services or unsuitability of transport timetables, the undertakings in which they are employed should endeavour to secure from the organisations providing public transport in the locality concerned the necessary adjustments or improvements in their services.

44. Where adequate and practicable transport facilities for the workers are necessary and cannot be provided in any other way, the undertakings in which they are employed should themselves provide the transport.

VII. PREVENTION OF ACCIDENTS

45. Members should take appropriate measures for the prevention of accidents and occupational diseases.

VIII. WORKMEN'S COMPENSATION

46. In case of incapacity compensation should be paid as from the day of the accident, whether it be payable by the employer, the accident insurance institution or the sickness insurance institution concerned.

47. In cases where the injury results in incapacity of such a nature that the injured workman must have the constant help of another person, additional compensation should be provided.

48. Injured workmen should be entitled to medical aid and to such surgical and pharmaceutical aid as is recognised to be necessary in consequence of accidents. The cost of such aid should be defrayed either by the employer, by accident insurance institutions, or by sickness or invalidity insurance institutions.

49. (1) Injured workmen should be entitled to the supply and normal renewal, by the employer or insurer, of such artificial limbs and surgical appliances as are recognised to be necessary: Provided that national laws or regulations may allow in exceptional circumstances the supply and renewal of such artificial limbs and appliances to be replaced by the award to the injured workman of a sum representing the probable cost of the supply and renewal of such appliances, this sum to be decided at the time when the amount of compensation is settled or revised.

(2) National laws or regulations should provide for such supervisory measures as are necessary, either to prevent abuses in connection with the renewal of appliances, or to ensure that the additional compensation is utilised for this purpose.

IX. WORKMEN'S COMPENSATION FOR OCCUPATIONAL DISEASES

50. Each Member should provide that compensation shall be payable to workmen incapacitated by occupational diseases, or in the case of death from such diseases, to their

dependants, in accordance with the general principles of the national legislation relating to compensation for industrial accidents.

51. The rates of such compensation should not be less than those prescribed by the national legislation for injury resulting from industrial accidents. Subject to this provision, each Member, in determining in its national laws or regulations the conditions under which compensation for the said diseases should be payable, and in applying to the said diseases its legislation in regard to compensation for industrial accidents, may make such modifications and adaptations as it thinks expedient.

52. Each Member should consider as occupational diseases those diseases and poisonings set forth in a Schedule to be established by the Member in consultation with the most representative organisations of employers and workers.

X. SOCIAL SECURITY

53. Each Member should extend its laws and regulations establishing systems of insurance or other appropriate systems providing security in case of sickness, maternity, invalidity, old age and similar social risks to plantation workers on conditions equivalent to those prevailing in the case of workers in industrial and commercial occupations.

XI. LABOUR INSPECTION

54. Inspectors provided with credentials should be empowered by law –

- (a) to visit and inspect, at any hour of the day or night, places where they may have reasonable cause to believe that persons under the protection of the law are employed, and to enter by day any place which they may have reasonable cause to believe to be an establishment, or part thereof, subject to their supervision: Provided that, before leaving, inspectors should, if possible, notify the employer or some representative of the employer of their visit;
- (b) to question, without witnesses, the staff belonging to the establishment, and, for the purpose of carrying out their duties, to apply for information to any other persons whose evidence they may consider necessary, and to require to be shown any registers or documents which the laws regulating conditions of work require to be kept.