Eleventh session
Item 14 of the provisional agenda

SOCIAL ADVANCEMENT IN TRUST TERRITORIES
(GENERAL ASSEMBLY RESOLUTION 323 (IV))

PENAL SANCTIONS FOR BREACH OF LABOUR CONTRACTS
BY INDIGENOUS INHABITANTS

Letter dated 3 April 1952 from the Assistant Director-General
of the International Labour Office to the
Secretary-General

I have the honour to refer to my letter of 21 June 1951 with which
was transmitted to you a note dealing with the situation at that time in
relation to the request contained in Trusteeship Council resolution 127 (VI)
for the expert advice of the International Labour Organisation on the problem
of penal sanctions for breach of labour contracts by indigenous inhabitants.

I have now pleasure in sending you a further note on the steps taken
in the matter by the International Labour Office since that date, together
with the report of the ILO Committee of Experts on Social Policy in
Non-Metropolitan Territories relating to penal sanctions which is referred
to in the note.
Relations with the Trusteeship Council in regard to Penal Sanctions for Breach of Labour Contracts by Indigenous Inhabitants

By letter addressed to the Secretary-General of the United Nations on 21 June 1951, the ILO informed him of the measures taken to meet the desire expressed by the General Assembly of the United Nations in its resolution 323 (IV) of 15 November 1949 in regard to social progress in Trust Territories and by the Trusteeship Council in its resolution 127 (VI). These two resolutions underlined the interest which the United Nations attach to the solution, among others, of the problem of penal sanctions for breach of labour contracts by indigenous inhabitants and the latter requested the expert advice of the International Labour Organization on the problem.

The letter of 21 June referred to indicated that the Governing Body of the ILO, to which the Trusteeship Council's request had been submitted, had decided to approach States Members of the Organization concerned with the subject of the Penal Sanctions (Indigenous Workers) Convention, No. 65 of 1939, with a view to securing details of their current law and practice, together with indications of the difficulties which prevent its fuller ratification. The note added that the replies received from States Members indicated that while progress had been made in regard to certain territories and that there were possibilities of further ratifications, there were still problems to be solved in this connexion. The Governing Body therefore decided that a full statement of the position in regard not only to Trust Territories but to all territories concerned should be laid before the ILO Committee of Experts on Social Policy in Non-Metropolitan Territories for its expert advice.

The Committee of Experts met from 26 November to 8 December 1951 and, after fully reviewing the present position in law and practice in the countries concerned, made recommendations for further action, of which the following is a summary:

"(1) That the Governing Body should address to States Members concerned a communication calling attention to the terms of the 1939 Convention and inviting countries which have not ratified it to give reconsideration to the possibility of doing so at an early date; directing attention to

1/ Circulated as document T/927.
the advances which have been made in many territories since the
1939 Convention was adopted, to the evidence which they provide
that the abolition of penal sanctions is now practicable and to
the views of the Committee as to the wrongness of penal sanctions
on moral grounds, their ineffectiveness in practice and the very
cogent reasons which exist for their immediate and general abolition;

"(2) That the Governing Body should consider whether the 1939 Convention
might be supplemented by a Recommendation providing for:

(a) the immediate abolition of sanctions of a penal
nature in connexion with women workers and certain other
categories and in respect of certain types of breaches of contract;

(b) the abolition of all penal sanctions not later than
31 December 1955;

(c) periodic reports and statistics to the ILO as to the
progress being made towards abolition of all penal sanctions."

A copy of the report of the Committee of Experts giving a summary of the
present position in law and practice and setting out in detail the conclusions
and recommendations of the Committee of Experts is attached to this note.

The Governing Body, having considered the recommendations of the Committee
of Experts at its 118th session (11-14 March 1952), authorized the Director-
General to communicate to the Governments of the States Members concerned and to
the Trusteehip Council the views of the Committee of Experts and its
recommendations for further action. Moreover, the Governing Body agreed that
the question of penal sanctions for breach of contracts of employment by
indigenous workers should be brought again to its attention when it proceeds to
consider the agenda of the 37th session of the International Labour Conference
(1954).
INTERNATIONAL LABOUR OFFICE

Committee of Experts on Social Policy in Non-Metropolitan Territories

Second Session, Geneva, 26 November - 8 December 1951

Report

1. The Committee met at the International Labour Office, Geneva from 26 November to 8 December 1951, in accordance with a decision taken by the Governing Body at its 115th Session in June 1951. The Committee was composed of 12 experts, and three representatives of the Governing Body were present.

Father Pierre CHARLES, S.J.  Professor at Louvain University, Administrator and Professor at the University Institute of Overseas Territories, Antwerp, Belgium.

Mr. M. de COPHET  Honorary Counsellor of State, Honorary Governor-General of Overseas Territories.

Mr. James P. DAVIS  Director, Office of Territories, U.S. Department of the Interior.

Dr. E.E. KURANGIYI-TAYLOR  Gold Coast University College.

Dr. H.J. van MÖCK  Former Acting Governor-General of Indonesia.

Mr. Guillermo ATILES MOREU  Manager, State Insurance Fund, Puerto Rico.

Colonel Alveres E. NEVES de FONTOURA  Former Governor of Timor, Professor, School of Higher Colonial Studies, Lisbon; (accompanied by Professor Reu VENTURA, Faculty of Law, Lisbon).

Mr. Ignacio PINTO  Senator for Dahomey.

Mr. F.L. BROWN  Former Chief Secretary, Nyasaland. (substitute for Mr. R.O. RAMAGE)

Mr. William Van REMOORDEL  Member of the Belgian Senate, Chairman of the Governing Body, Société de Crédit au Colonat.
Dr. Audrey I. RICHARDS

Director, East African Institute of Social Research, Makerere College, Uganda.

Mr. M. SMUTS

Department of Native Affairs, Pretoria, South Africa.

Governing Body Members

Mr. JARDIM
Mr. W. GEMMILL
Mr. IBANEZ

Government representative
Employers' representative
Workers' representative

Dr. van MOOK was elected Chairman of the Committee.

2. The Committee agreed to study the questions on its agenda, which had been decided by the Governing Body at its 115th Session, in the following order:

(1) Penal sanctions for breaches of contracts of employment by indigenous inhabitants.

(2) Further study of the question of migrant workers.

(3) Technical and vocational training and other allied problems within the competence of the ILO.

(4) Examination of programme of work of the Office in the field of social policy in non-metropolitan territories.

3. The Committee elected Mr. HINNO as the Reporter for the first item (Penal sanctions for breaches of contracts of employment by indigenous inhabitants) and Mr. BROWN as the Reporter for the second item (Further study of the question of migrant workers). The Chairman acted as Reporter for the remaining items.

Report on Penal Sanctions for Breaches of Contracts of Employment by Indigenous Inhabitants

Item I of the Agenda

Introduction

4. The question of penal sanctions for breaches of contracts of employment by indigenous inhabitants came before the Committee of Experts in the following circumstances:

The three members of the Governing Body who attended the meetings of the Committee of Experts wished it to be made clear that they were not parties to, nor had responsibility for, the Report and Recommendations of the Committee.

On 15 November
On 15 November 1949, the General Assembly of the United Nations, by Resolution 323 (IV), in taking note of the conclusions and recommendations of the Trusteeship Council, recalled that one of the basic objectives of the International Trusteeship system is to encourage respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion, and decided to recommend to the Trusteeship Council the adoption of suitable measures for solving, in a broad and humanitarian spirit, such important social problems as migrant labour and penal sanctions for breach of labour contracts by indigenous inhabitants.

5. The Trusteeship Council, at its Sixth Session (Spring 1950), adopted Resolution 127 (VI), which, inter alia, took note of the recommendations of the General Assembly contained in Resolution 323 (IV) and requested the Secretariat to bring to the attention of the International Labour Organisation the General Assembly's interest in the problems of migrant labour and penal sanctions for breach of labour contracts by indigenous inhabitants and to request the expert advice of the International Labour Organisation on these problems and decided to defer further action until such expert advice can be obtained from the International Labour Organisation or other sources.

6. This Report deals only with subsequent action as regards penal sanctions.

The request of the Trusteeship Council was laid before the Governing Body of the International Labour Office at its 112th Session in June 1950 and the Governing Body decided, as a first step, to approach States Members concerned with the subject matter of the Penal Sections (Indigenous Workers) Convention (No. 65), 1939, with a view to securing details of their current law and practice, together with indications of the difficulties which prevent fuller ratification. The Governing Body subsequently decided, at its 115th Session in June 1951, that this information should be laid before the Committee of Experts on Social Policy, in Non-Metropolitan Territories for its recommendations.

The Penal Sanctions (Indigenous Workers) Convention, 1939

7. The operative Articles of the Convention are as follows:

Article 1

"1. This Convention applies to all contracts by which a worker belonging to or assimilated to the indigenous population of a dependent territory of a Member of the Organisation, or belonging to or assimilated to the dependent indigenous population of the home territory of a Member of the Organisation, enters the service of any public authority, individual, company or association, whether non-indigenous or indigenous, for remuneration in cash or in any other form whatsoever.

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

(a) any refusal or failure of the worker to commence or perform the service stipulated in the contract;
(b) any neglect of duty or lack of diligence on the part of the worker;

(c) the absence of the worker without permission or valid reason; and

(d) the desertion of the worker."

Article 2

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

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

8. It is to be noted that the Convention does not deal with all offences which may occur in connexion with the relationship of employer and worker but merely those relating to breaches of the contract of employment in the strict sense, i.e. breaches of the obligation to perform the service stipulated or implied in the contract. There are two other main groups of offences associated with the performance of work for an employer which, having regard to the material laid before the Conference in 1938 and 1939 and the discussions thereat, were not included within the terms of the Convention. These were then expressed to be (a) offences against public order and labour discipline and actions other than those specified in the Convention which involve material or other loss to the employer. This group would include the following offences: drunkenness while at work; violent language or insults; threats; assault or disorderly conduct; use of the employer's property without his permission; acts of omission or commission involving material or other loss for the employer; and (b) offences against health and safety regulations.

9. The broad distinction between those breaches of the obligation to perform the service stipulated or implied in the contract and the groups of offences covered in (a) and (b) above was claimed in the Office Report to the Conference in 1938 1/ to be as follows. The offences in the first category do not, according to modern legal principles accepted by advanced countries, come under the penal law but are dealt with by means of civil sanctions, or in the case of less serious offences, by disciplinary action. Those in group (a) are of mixed character. Some of them are normally dealt with in more advanced countries by civil sanctions or possibly by disciplinary action, but in given circumstances there may be an element in them which would render the offender liable to penal sanctions in any country. Offences under group (b) normally involve penal sanctions under modern legislation.

10. It appeared to the International Labour Conference in 1939, therefore, that only in respect of offences of the first group was there any profound difference between the law and practice relating to labour offences in certain territories where indigenous workers are employed and that of countries

observing modern labour code procedures and that, accordingly, the Convention should deal only with them.

11. The Committee of Experts noted that the Conference in 1939 did not consider it possible to envisage the immediate general abolition of penal sanctions but required them to "be abolished progressively and as soon as possible" except in the case of non-adult persons whose apparent age is less than a minimum age to be prescribed by law or regulations, in respect of whom penal sanctions are to be abolished immediately. The Committee, therefore, thought it convenient to examine the extent to which progress has been made in recent years in the countries concerned.

12. In this connexion, it noted that while the Penal Sanctions (Indigenous Workers) Convention, 1939, has been ratified only by the United Kingdom and New Zealand, the de facto position is much more favourable than this would imply. No penal sanctions for the breaches of contract specified in the Convention now exist in French, Dutch, Italian, New Zealand or United States territories throughout the world, according to the information submitted to the Committee. Moreover, the Netherlands Government has informed the ILO that it intends to take action shortly to ratify the Convention. The French Government, on the other hand, has indicated that its reason for not ratifying the Convention is that it is legally and psychologically impossible to do so. The French Constitution does not permit the establishment of any discriminatory regulations applicable to native workers. Article 80 says, "All persons within the jurisdiction of the Overseas Territories have the status of French citizens in the same way as French nationals". Any text giving persons within the jurisdiction of the Overseas Territories a status such as "native" distinguishable from that of "citizen" is therefore contrary to the Constitution.

13. As regards Australian Territories, information laid before the Committee showed that in respect of the territory of Papua-New Guinea, a new Ordinance, the Native Labour Ordinance, 1950, provides for the abolition of contract labour. Moreover, the new Ordinance contains no penal provisions for breach of agreement, such as appeared in the previous law, for "absence from work without reasonable excuse". The sole penal sanction existing in the Trust Territory of Nauru deals with the case of a labourer who has entered into a contract of service and who neglects, without reasonable cause, to perform the work envisaged.

14. As regards United Kingdom territories, considerable advances have been made since 1939 and penal sanctions, as defined in the Convention, do not now exist in practice in the following territories: Aden, Barbados, Bermuda, British Guiana, France, Cyprus, Pominica, Falkland Islands, Fiji, Gambia, Gibraltar, Gold Coast (including Togoland under United Kingdom Trusteeship), Grenada, Hong Kong, Jamaica, Leeward Islands, Malta, Mauritius, Nigeria (including Cameroons under United Kingdom Trusteeship), North Borneo, Nyasaland, St. Helena, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Trinidad and Tobago, Uganda.

/In the following
In the following territories, legislation for abolition of remaining penal sanctions is under consideration: British Honduras, British Somaliland, Gilbert and Ellice Islands, Sarawak, Sierra Leone, Singapore.

In Malaya, while the law still provides for penal sanctions in certain circumstances, it has not been applied in practice for many years.

15. Indeed, the problem of penal sanctions, as far as United Kingdom Territories are concerned, is now confined to East and Central Africa. With a few exceptions, this is generally true as regards non-metropolitan territories, whatever the metropolitan power concerned. It is in the East and Central African area and in the Union of South Africa, including the territory of South West Africa, that the problem is now mainly concentrated. In the United Kingdom territories in the area, however, while complete abolition has not yet been achieved, there has been that progress towards abolition for which the Convention calls in the case of adults and the exclusion from penal sanctions of non-adults. The territories concerned are Kenya, Tanganyika, Northern Rhodesia, Zanzibar and the High Commission Territories of Basutoland, Bechuanaland and Swaziland, and by and large, the progress made has been by way of abolishing penal sanctions for the breaches of contract specified in Article 1, subsection 2 (a), (b) and (c) of the 1939 Convention, leaving only (d) - the desertion of the worker - to attract a penal sanction. Exceptionally, however, Northern Rhodesia has not so far made any considerable progress, though the possibilities of advance have been considered. The only statistics available to the Committee were in respect of Tanganyika where there were 189 convictions of workers under the Masters and Native Servants Ordinance in 1950.

16. In Southern Rhodesia, the law has not changed since the adoption of the Convention and the Government's position is that "the immediate or even early abolition of criminal penalties in the circumstances obtaining in Southern Rhodesia would be likely not only to upset labour stability but to increase lawlessness." The legislation on the subject has been strongly influenced by that of South Africa. There, the Masters and Servants Acts of the several provinces of the Union and the Native Labour Regulations Act No. 15 of 1911, all provide penalties for breaches of contract by manual and domestic workers such as those detailed in Article 1 of the Convention. The Union Government has accordingly stated that it does not contemplate ratification of the Convention. In the Territory of South West Africa, a similar system of penalties for breaches of contract is in operation.

17. In the Belgian Congo, penal sanctions for various breaches of contract, including refusal to carry out the contract and grave or repeated offences against the discipline of work or of the establishment, are in operation. There were in 1948 and 1949, respectively, 39,576 and 34,066 convictions for infringements of the terms concerned. A tripartite Commission has, however, recently reported in favour of the non-application of penal sanctions to women workers, to skilled workers holding certificates of competency, professional workers such as teachers, and other categories to be designated by the local administration. For all other workers, the Commission recommended that penal sanctions should be applicable only during the first three years of employment. If no penal sanctions were incurred during that period, the
period, the worker would be free from them for the future. If he did incur a penal sanction during the initial period, the testing period would be extended to six years. No account was to be taken of any offence committed during the first three months of employment. Workers are not, in any case, subject to penal sanctions if they are under the actual or apparent age of 18 years.

The proposals of the tripartite Commission have been submitted to the Council of Government and further action may be hoped for both in respect of the Belgian Congo and the Trust Territory of Ruanda Urundi, to which existing Congo legislation also applies. In 1950, the number of convictions registered in Ruanda Urundi for desertion and other derelictions of duty was 974, to which should be added 206 non-judicial fines imposed for minor offences.

18. In the Portuguese territories, according to information supplied to the Committee by Colonel Neves da Fontoura (Portugal), only those indigenous workers who have not yet reached a stage of development justifying the application to them of European laws and sanctions are still subject to penal sanctions. It is the policy of the Portuguese Government to encourage the assimilation of greater numbers of the indigenous populations. In accordance with this policy, the whole populations of the Cape Verde Islands and the Portuguese Indies have been exempted from the special native status and are not subject to penal sanctions in connexion with contracts of employment. On the other hand, that had not yet been possible in the case of the majority of the indigenous inhabitants of Angola and Mozambique and other Portuguese territories to whom penal sanctions, including those set out in the Convention, still apply.

Discussion

19. The Committee, having reviewed the progress achieved since 1939 and taken note of the present situation, proceeded to an exchange of views on various aspects of the question.

20. Mr. Atiles Moreu (Puerto Rico) considered that it was now time to decide on the complete abolition of penal sanctions, not only in respect of the breaches of contract specified in the 1939 Convention, but others as well. A contract of service created a civil relationship and failure to observe it should attract only civil remedies. Contracts for personal service were not directly enforced in civilized countries. To do so led to slavery. Penal sanctions had no educational value and made the Governments which tolerated them feared and hated by the indigenous peoples. They were the negation of good industrial relations and even if it was claimed that it was to the pecuniary advantage of employers to maintain them, that advantage surely weighed less than the maintenance of human rights and the dignity of the worker. The progress made towards abolition since 1939 showed that it was possible to achieve complete abolition now.

21. Father Charles (Belgium) supported this point of view and said that it was dangerous to leave to the States concerned the liberty to decide at what pace penal sanctions could be "abolished progressively and as soon as possible". Penal sanctions had no educative value and were often incomprehensible.
incomprehensible to the indigenous worker. They were often imposed in respect of infractions of the contract or of work rules which the worker did not understand or of which he did not know the existence. It was the bad employer who had recourse to penal sanctions and it was the same employers - often small - who called them in aid of bad working and living conditions. A recent attempt in Ruanda Urundi to secure some mitigation of penal sanctions applicable in that territory was opposed by the entire Council of Government, including indigenous representatives.

22. Mr. Smuts (South Africa), after explaining the constitutional position of the Union of South Africa in relation to the matters dealt with in the 1939 Convention, said that it had been found impracticable to abolish penal sanctions and it would continue to be so in the near future.

He referred to the arguments advanced in justification of penal sanctions before the Penal Sanctions (Indigenous Workers) Convention was adopted in 1939. These arguments were fully set out in the Office Report to the Conference of 1938 and were still valid. They are, briefly, that:

(a) penal sanctions are of much greater importance as a means of securing compliance with contracts or employment in territories where the worker is not so dependent on his wages for a livelihood as in the more advanced countries;

(b) to meet this situation, penal sanctions are necessary and civil sanctions are inadequate; dismissal of the worker hurts the employer more than the worker, who, because of difficulties of identification and shortage of labour, can easily find other employment;

(c) if civil sanctions involve the making of orders for the payment of damages against the workers, and such orders can be enforced by civil imprisonment or imprisonment for contempt of court, as in certain countries, the effect is the same as imprisonment inflicted directly for breaking the contract;

(d) it is essential, in the interests of the community, that freely contracted obligations should be respected and the inculcation of this truth among primitive peoples is of great educative value;

(e) an employer who has spent a considerable sum in the recruiting and transport of his workers must be able to count on their services and should be protected against breach of contract by irresponsible workers;

(f) there is, the risk that an employer who is not protected by law will try to exercise repressive measures on his own initiative; and

(g) it is incorrect to say that penal sanctions imply a state of servitude, as the contracts carrying such sanctions are freely entered into by the workers, who are free to leave when the agreed period of service has expired.

He emphasized
He emphasized the fact that penal sanctions applied to breaches of contract either by the employer or the worker, so that both derive protection therefrom. Moreover, native law, under which the vast majority of South African natives operated, made no distinction between civil and criminal remedies. Advances were, however, taking place. Workers on contracts on a daily basis were not in fact subject to penal sanctions. Replying to statements to the effect that in other territories the impact of penal sanctions now fell largely on workers operating on long-term contracts, he gave figures showing that in 1950 convictions of African workers under the Native Labour Regulation Act - which applied usually to long-term contracts - numbered 11,932, while convictions under the Masters and Servants Acts - concerning mainly workers on short-term contracts - numbered 10,105.

23. Dr. Kurenyi-Taylor (Gold Coast) supported by other members of the Committee, challenged the assertion that native law made no distinction between criminal and civil sanctions and Dr. Kurenyi-Taylor went in to support fully the views of Mr. Agles Moreu and Father Charles in favour of the immediate abolition of penal sanctions. Territories such as the Gold Coast had abolished penal sanctions without the chaos and lack of industrial security which it was sometimes suggested would follow. Suggestions of a similar nature had been made in comorion with the abolition of slavery which indicated the analogy between penal sanctions and a state of servitude. All over the world dependent peoples were looking up to international organizations, particularly the specialized agencies. These people were being told a great deal about democracy and the fundamental human rights worked out by civilized nations. This teaching must be borne out by the practice of the civilized nations and of international organizations in their relations with dependent peoples; the alternative was disillusionment and revolution. The fact that indigenous representatives on a Council of Government had opposed the abolition of penal sanctions merely showed that they had not been chosen by any democratic process and that their interests were those of employers of labour who must be expected to oppose abolition. He also suggested that penal sanctions in relation to acts of omission or commission involving material or other loss to the employer, in so far as not covered by the Convention, should also be abolished, as well as legislation which existed in various territories providing for penalties for wilful or malicious breach of contracts by workers in essential services.

24. Colonel Neves da Fontoura considered that penal sanctions could only be abolished completely when the educational level of indigenous workers warranted it. He favoured, however, abolition even now of penal sanctions in cases of negligence and in relation to women, whereas workers under age are not subject to sanctions because they cannot conclude contracts. It was possible that the Portuguese Native Labour Code, now being revised, might be altered accordingly.

25. Mr. van Remoortel (Belgium) thought that penal sanctions had lost much of their validity. Many employers did not invoke them, others felt that they should be given powers to apply them themselves. He considered it was time that a definite and radical decision abolishing all penal sanctions was taken.

/26. Mr. Brown
26. Mr. Brown (United Kingdom) suggested modification of the 1939 Convention to enable final abolition of penal sanctions to be speeded up. In his experience, there had been no serious repercussions in countries which had abolished them. Returned deserters were not efficient workers. The essential prerequisite of a contented labour force was good working conditions. While there was some case for maintaining penal sanctions in the case of workers on long-term contracts who had been recruited from a distance and in respect of whom advances had been made or other expenses incurred, he thought that the countries concerned should re-examine the problem with a view to abolishing all penal sanctions at an early date.

27. Dr. Richards (United Kingdom), Mr. de Cornet (France) and Mr. Pinto (French Union-Dahomey), supported the idea of modifying the 1939 Convention so as to provide for immediate abolition of penal sanctions, and Mr. Davis (United States) declared himself convinced of their lack of moral and practical value and their detrimental effect on good industrial and civic relations. He thought the Committee should make a strong recommendation for rapid action to abolish them. Dr. Kurnik-K-Taylor and Mr. Atiles Moreu joined in the support for a strong recommendation on immediate abolition and Dr. van Hook (Netherlands) outlined the steps taken to abolish penal sanctions in the Netherlands Indies. While realizing the transitional difficulties to which abolition might give rise, he considered their continuance might contribute in certain areas to a highly explosive situation. The constant pressure of international opinion and gradual realization of the ineffectiveness of the system would themselves be strong factors tending towards their abolition.

28. There followed a discussion on the most appropriate procedure to be followed in the course of which the Representative of the Director-General pointed out that since the 1939 Convention in its present form had been ratified by only two countries, a stiffening of its provisions would be unlikely to induce more speedy ratification by other countries. On the other hand, a strong recommendation on the basis of the expressed views of the members of the Committee supplementing the 1939 Convention might be of value.

29. Mr. Smuts supported the point of view that alteration of the 1939 Convention would not give effective results. Nevertheless, he agreed with the view expressed that penal sanctions were often ineffective and resorted to less and less by the more enlightened employers. While a whole list of offences were mentioned in the Masters and Servants Laws of the various provinces of the Union of South Africa, he doubted whether prosecutions took place for offences other than desertion. He suggested that a recommendation should be directed to the Governments concerned to the effect that a careful examination and reassessment of the position should be made with a view to determining whether a stage had not been reached when penal sanctions for breaches of contracts could be abolished entirely or their scope narrowed down.

30. After examination by a Subcommittee of this suggestion and of draft resolutions proposed by Father Charles and Mr. Atiles Moreu, the Committee came to the conclusions set out later in this Report.

/Conclusions
Conclusions and Recommendations of the Committee

31. The Committee, in the first place, wished to place on record its appreciation of the great advances which have been made towards abolition of penal sanctions for breaches of contracts of employment by indigenous workers which have followed the adoption of the Penal Sanctions (Indigenous Workers) Convention, 1939. Nevertheless, it cannot regard the present position as satisfactory. Penal sanctions, in the view of the Committee, transform the normal civil contractual relationship between an employer and an employee into a form of legalized servitude which is contrary to modern conceptions of personal dignity and the rights of free men. It rejects as unfounded assertions that penal sanctions have an educative value; on the contrary, it considers them to be an obstacle to healthy industrial relations, fruitful of labour unrest, and in practice inefficacious. It rejects as equally unfounded arguments that the abolition of penal sanctions would affect labour stability or lead to industrial unrest or other difficulties. Any suggestions of this kind it considers to have been demonstrated to be without foundation in view of the ease with which the transition from a system of contracts buttressed by penal sanctions to a system involving merely civil obligations has been effected in various non-metropolitan countries. To this, certain members of the Committee were able to testify from their own experience.1/

32. The Committee therefore considers that the Governing Body of the International Labour Office should address to States Members of the Organisation concerned a communication:

(1) calling attention to the terms of the Penal Sanctions (Indigenous Workers) Convention, 1939, and inviting those countries which have not ratified it to give reconsideration to the possibility of doing so at an early date;

(2) directing attention to the advances which have been made in many territories since the 1939 Convention was adopted and to the evidence which these advances provide that abolition of penal sanctions is now practicable;2/

(3) directing attention to the views of the Committee of Experts as to the wrongness of penal sanctions on moral grounds, their ineffectiveness in practice and the very cogent reasons which exist for their immediate and general abolition.

1/ In view of the arguments advanced by him and mentioned earlier in the Report, Mr. Smuts does not agree with the views expressed in this paragraph.

2/ Mr. Smuts does not regard the complete abolition of penal sanctions at this stage as practicable and therefore does not support this and the remaining conclusions of the Committee.
33. The Committee, while not in any way altering its strong collective opinion that penal sanctions for breaches of contracts of employment as defined in the 1939 Convention can and should be abolished forthwith, suggests further that, while endorsing this, the Governing Body, as a method of giving a lead to Governments which still maintain penal sanctions, should consider whether the 1939 Convention might be supplemented by a Recommendation which would provide:

(1) for the immediate abolition of sanctions of a penal nature in connexion with:

(a) women workers;

(b) workers having served for a period or periods amounting to more than two years with the same employer;\(^1\)

(c) workers on verbal contracts or on short-term contracts;

(2) for the immediate abolition of sanctions of a penal nature in respect of:

(a) any neglect of duty or lack of diligence on the part of the worker;

(b) the absence of the worker without permission or valid reason;\(^1\)

(3) the abolition of all penal sanctions not later than 31 December 1955;

(4) periodic reports to the International Labour Office as to the progress being made towards abolition of all penal sanctions and statistics as to the annual numbers of workers upon whom penal sanctions have been imposed.

\(^1\) Colonel Neves da Fontoura does not consider abolition of penal sanctions in these cases to be immediately practicable.