

**International Labour Conference, 99th Session, 2010**

**Report V(2A)**

# **HIV/AIDS and the world of work**

**Fifth item on the agenda**

**International Labour Office Geneva**

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## CONTENTS

	<i>Page</i>
INTRODUCTION .....	1
REPLIES RECEIVED AND COMMENTARIES .....	5
1. General observations.....	5
2. Observations on the proposed Recommendation on HIV/AIDS and the world of work.....	8

## **LIST OF RECURRING ABBREVIATIONS**

AIDS	acquired immunodeficiency syndrome
ARV	antiretroviral
EU	European Union
HIV	human immunodeficiency virus
ILC	International Labour Conference
ILO	International Labour Organization
IMEC	industrialized market economic countries
ITUC	International Trade Union Confederation (comprises the affiliated organizations of the former ICFTU and WCL together with eight national trade union organizations)
OSH	occupational safety and health
PLHIV	people living with HIV
TB	tuberculosis
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNGASS	United Nations General Assembly Special Session on HIV/AIDS
WHO	World Health Organization

### **Employers' and workers' organizations**

Argentina	CGTRA	General Labour Confederation of the Argentine Republic
Austria	BAK	Federal Chamber of Labour
Belgium	CNT	National Labour Council
	ACV–CSC	Confederation of Christian Trade Unions
Bulgaria	CITUB	Confederation of Independent Trade Unions in Bulgaria
Colombia	ANDI	National Employers' Association of Colombia
Costa Rica	UCCAEP	Costa Rica Union of Chambers and Associations of Private Enterprise
Côte d'Ivoire	CGECI	General Confederation of Enterprises in Côte d'Ivoire
Denmark	FTF	Salaried Employees' and Civil Servants' Confederation
Fiji	FTUC	Fiji Trades Union Congress

Finland	EK	Confederation of Finnish Industries
	AKAVA	Confederation of Unions for Academic Professionals (in Finland)
	SAK	Central Organization of Finnish Trade Unions
	STTK	Finnish Confederation of Salaried Employees
France	CGT	General Confederation of Labour
Germany	BDA	Confederation of German Employers' Associations
Greece	ESEE	National Confederation of Greek Trade
	SEV	Hellenic Federation of Enterprises
	GSEE	General Confederation of Greek Workers
Ireland	ICTU	Irish Congress of Trade Unions
Japan	NK	Japan Business Federation
Jordan	JCC	Jordan Chamber of Commerce
Mauritius	MEF	Mauritius Employers' Federation
Netherlands	FNV	Netherlands Trade Union Confederation
New Zealand	Business NZ	Business New Zealand
	NZCTU	New Zealand Council of Trade Unions – Te Kauae Kaimahi
Norway	NHO	Confederation of Norwegian Enterprise
	LO	Confederation of Trade Unions in Norway
	UNIO	Confederation of Unions for Professionals, Norway
	YS	Confederation of Vocational Unions
Pakistan	EFP	Employers' Federation of Pakistan
Peru	CONFIEP	National Confederation of Private Business Associations
	CATP	Autonomous Confederation of Peruvian Workers
Poland	NSZZ	Independent and Self-Governing Trade Union Solidarnosc
Portugal	CIP	Confederation of Portuguese Industry
	CGTP-IN	General Confederation of Portuguese Workers–National Intersindical
	UGT-P	General Union of Workers
South Africa	BUSA	Business Unity South Africa
	COSATU	Congress of South African Trade Unions
Spain	UGT	General Union of Workers
Swaziland	SFTU	Swaziland Federation of Trade Unions
Sweden	SN	Confederation of Swedish Enterprise
	TCO	Swedish Confederation of Professional Employees
Switzerland	UPS	Confederation of Swiss Employers

United Kingdom    TUC            Trades Union Congress

**International organizations of workers**

ITUC                    International Trade Union Confederation

ITUC–Africa            African Regional Organization of the International Trade Union  
Confederation

## INTRODUCTION

The agenda of the 98th Session of the International Labour Conference in 2009 included an item on HIV/AIDS and the world of work. The background to this may be traced back to 2007, when the Governing Body of the ILO, at its 298th Session (March 2007), decided to place such an item on the agenda of the 98th Session of the International Labour Conference in 2009 for a double discussion leading to the adoption of an autonomous Recommendation on HIV/AIDS and the world of work.<sup>1</sup> It was considered necessary to adopt an international standard on this subject in order to increase the attention devoted to HIV/AIDS at the national and international levels, to promote united action among the key actors on HIV/AIDS, and to increase the impact of the ILO code of practice on HIV/AIDS and the world of work adopted in 2001 (the “code of practice”), as well as to review developments since 2001.<sup>2</sup>

In preparation for this discussion, the Office produced two reports: Report IV(1)<sup>3</sup> and Report IV(2).<sup>4</sup> The Conference Committee on HIV/AIDS considered these reports and adopted its own report,<sup>5</sup> which in turn was submitted to and adopted by the plenary of the Conference on 18 June 2009. At the same sitting, the Conference also adopted the following resolution:

The General Conference of the International Labour Organization,

Having adopted the report of the Committee appointed to consider the fourth item on the agenda,

Having in particular approved as general conclusions, with a view to the consultation of governments, proposals for a Recommendation concerning HIV/AIDS and the world of work,

Decides that an item entitled “HIV/AIDS and the world of work” shall be included in the agenda of its next ordinary session for second discussion with a view to the adoption of a Recommendation.

In the light of this resolution, following the discussion and the subsequent consultation and in conformity with article 39, paragraph 6, of the Standing Orders of the Conference, the Office prepared and communicated Report V(1)<sup>6</sup> containing the proposed Recommendation based on the conclusions adopted by the Conference at its 98th Session. The text was formulated on the basis of the first discussion by the Conference and took into account the replies received to the questionnaire contained in Report IV(1). Pursuant to article 39, paragraph 6, of the Standing Orders, this text was communicated to governments so as to reach them not later than two months from the closing of the 98th Session of the Conference. In accordance with the consistent practice since 1988, the report of the Committee on HIV/AIDS appointed by the Conference to consider this item was sent to member States in its entirety, together with the record of the discussion held

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<sup>1</sup> ILO, *Date, place and agenda of the International Labour Conference: Agenda of the 98th Session (2009) of the International Labour Conference*, Governing Body, 298th Session, Geneva, March 2007, GB.298/2.

<sup>2</sup> ILO: *Minutes of the 298th Session*, Governing Body, March 2007, GB.298/PV.

<sup>3</sup> ILO, *HIV/AIDS and the world of work*, Report IV(1), International Labour Conference, 98th Session, Geneva, 2009.

<sup>4</sup> ILO, *HIV/AIDS and the world of work*, Report IV(2), International Labour Conference, 98th Session, Geneva, 2009.

<sup>5</sup> ILO, *Provisional Record* No. 15, International Labour Conference, 98th Session, Geneva 2009; and *Provisional Record* No. 20, International Labour Conference, 98th Session, Geneva, 2009.

<sup>6</sup> ILO: *HIV/AIDS and the world of work*, Report V(1), International Labour Conference, 99th Session, Geneva, 2010.

in the plenary session of the Conference.<sup>7</sup> Governments were invited to send their suggested amendments or comments so as to reach the Office by 19 November 2009 at the latest, and to inform the Office, by the same date, whether they considered that the proposed text provides a satisfactory basis for discussion by the Conference at its 99th Session (June 2010).

In accordance with article 39, paragraph 6, of the Standing Orders of the Conference, as amended at its 73rd Session (1987), governments were requested to consult the most representative organizations of employers and workers before finalizing their replies and to indicate which organizations they had consulted. It should be noted that such consultations are also required by Article 5(1)(a) of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), for countries that have ratified this Convention. The results of the consultations were to be reflected in the governments' replies. It had also been suggested that governments might wish to consult organizations of persons living with HIV, and to include in their replies any information supplied by such bodies.

The Conference Committee also requested the Office to enter into consultations with UNAIDS and WHO concerning the definitions of HIV and of AIDS. This was done in November 2009, prior to the preparation of this report.

At the time the present report was prepared, the Office had received replies from the governments of the following 31 member States: Argentina, Australia, Austria, Barbados, Belgium, Belize, Burkina Faso, Canada, Czech Republic, Denmark, Dominican Republic, Egypt, Finland, Greece, Japan, Jordan, Latvia, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, South Africa, Sweden, Switzerland, United Kingdom and United States.

All governments indicated that their replies had been drawn up after consultation with organizations of employers and workers. Some of those governments incorporated in their replies the opinions expressed by these organizations on certain points, while others transmitted the observations of employers' and workers' organizations separately. In some cases, replies were received directly from employers' and workers' organizations.

To ensure that both the English and French texts of the proposed Recommendation on HIV/AIDS and the world of work are received by the governments within the time limit laid down in article 39, paragraph 7, of the Standing Orders of the Conference, Report V(2) has been published in two volumes. The present report (Report V(2A)), has been drawn up on the basis of the replies received from governments and employers' and workers' organizations, and in a few cases from networks of people living with HIV, and contains the essential points of their observations. It is divided into two sections: the first section comprises comments of a general nature, while the second contains the observations of the constituents on specific provisions of the proposed Recommendation. For practical reasons, it has been necessary at times to reduce length while retaining a comment's substance, and to group similar replies. Most comments closely followed the structure of the text of the Recommendation and specified the parts of the text to which they referred. In those instances where that is not the case, however, the Office has, to the best of its ability, allocated observations to appropriate parts of the report.

The bilingual Report V(2B) contains the English and French versions of the proposed text of the Recommendation, as amended in the light of the observations made by governments and by employers' and workers' organizations and for the reasons set out in the Office commentaries. Some minor drafting changes have also been made, in particular to ensure full concordance between the two versions of the proposed instruments.

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<sup>7</sup> ILO, *Report of the Committee on HIV/AIDS, Provisional Record* No. 15, International Labour Conference, 98th Session, Geneva, 2009.

- The Office wishes to note that the term “worker”, as used in the text of Reports V(2A) and (2B) is intended to refer to workers in the broadest sense. Recalling that the HIV pandemic affects all persons equally, making no distinctions on the basis of social status or role, the reference to workers is intended to apply to all of the constituents in their capacity as “workers”, which includes persons in management and supervisory positions.
- Two questions arise in the French versions of the text with regard to terms that are used throughout the report and the draft instrument. First, the term “*droits de l’homme*” in the French text of blue Reports V(2A) and V(2B), should be understood as referring to the rights of both men and women, in order to capture more accurately the meaning of the term “human rights” in the English and “*derechos humanos*” in the Spanish.
- Second, the term “gender” in English and “*género*” in Spanish has usually been translated into French as “*égalité entre hommes et femmes*” or “*les différences entre hommes et femmes*”, as it is in the present draft instrument. The Office notes that this term should be understood as encompassing not only the biological differences between men and women, but also the social, cultural and economic roles associated with sexual identity, as well as other differences between men and women.

If the Conference so decides, these texts will serve as a basis for the second discussion, at the 99th Session (June 2010), with a view to developing a new instrument on HIV/AIDS and the world of work.

The following constituents stated that the proposed text contained in Report V(1) provides a satisfactory basis for the second discussion by the Conference at its 99th Session in June 2010:

*Governments:* Argentina, Australia, Austria, Barbados, Belgium, Belize, Burkina Faso, Canada, Czech Republic, Denmark, Dominican Republic, Egypt, Finland, Greece, Japan, Jordan, Latvia, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Norway, Panama, Poland, Portugal, South Africa, Sweden, Switzerland, United Kingdom, United States.

*Employers:* CNT (Belgium), ANDI (Colombia), UCCAEP (Costa Rica), CGECI (Côte d’Ivoire), EK (Finland), BDA (Germany), ESEE (Greece), SEV (Greece), NK (Japan), JCC (Jordan), MEF (Mauritius), Business NZ (New Zealand), NHO (Norway), EFP (Pakistan), CONFIEP (Peru), CIP (Portugal), BUSA (South Africa), SN (Sweden), UPS (Switzerland).

*Workers:* CGT–RA (Argentina), BAK (Austria), CNT (Belgium), ACV–CSC (Belgium), CITUB (Bulgaria), FTF (Denmark), FTUC (Fiji), AKAVA (Finland), SAK (Finland), STTK (Finland), CGT (France), GSEE (Greece), ICTU (Ireland), FNV (Netherlands), NZCTU (New Zealand), LO (Norway), UNIO (Norway), YS (Norway), CATP (Peru), NSZZ (Poland), CGTP–IN (Portugal), UGT–P (Portugal), COSATU (South Africa), UGT (Spain), SFTU (Swaziland), TCO (Sweden), TUC (United Kingdom), ITUC, ITUC–Africa.



## REPLIES RECEIVED AND COMMENTARIES

### 1. GENERAL OBSERVATIONS

#### GOVERNMENTS

*Belgium.* It is hoped that in three to five years this Recommendation could become a Convention.

*Canada.* UNAIDS recommends avoiding the use of the term “fight” or other similar combative language, and suggests alternatives such as “response”, “measures against”, “initiative”, “action”, “efforts” and “programme”. The language should be as inclusive as possible when discussing organizations representing persons living with HIV; “organizations of or with a mandate to represent persons living with HIV” should be used throughout the document.

*Dominican Republic.* The proposals made were debated by the tripartite-plus “*Petit Comité*”, the Dominican Republic’s National Workplace Council (CCT), and its suggested amendments are therefore the fruit of those tripartite consultations. Government representatives, employers and workers, as well as representatives of the presidential Council on AIDS (COPRESIDA), participated in these discussions. (*Office comment:* The Government made a number of detailed drafting proposals that were examined in the review of the draft Recommendation, but are not always fully reproduced in this report for reasons of space.)

*Greece.* The proposed Recommendation is not intended to prevent HIV transmission in all aspects of life, only in working life. The text should be amended accordingly by replacing “their families and dependants” with “affected persons”. Likewise, replace throughout the text “organizations representing persons living with HIV” with “civil society/non-governmental organizations, especially those representing people living with and affected by HIV and their associations and organizations”.

*Jordan.* The draft Recommendation is contradictory in stating that HIV/AIDS affects the workplace but that workers should not be required to undergo HIV tests. If HIV is considered an occupational disease, how can one not verify whether workers are affected?

*Mexico.* Replace throughout the document the words “combat” or “fight” against HIV and AIDS with “response”.

*New Zealand.* The Government supports a non-binding instrument with the flexibility that a Recommendation provides for the diverse needs of the ILO member States. The ILO should stay within its mandate of the world of work, addressing workers and workplaces, as opposed to society at large. New Zealand supports the ILO’s cooperation and coordination with other international organizations so as to avoid duplicating work in this area. The Government would consider a national plan for HIV/AIDS but would not support this being mandated.

*Norway.* The Government considers the scope ambitious and wide as it deals not only with working life but also with health policy, but agrees that coordination and cooperation between health-care policies and work policies are of high value. It therefore underlines the importance of each country adopting policies appropriate to its own situation. The Government agrees that it is important to ensure a solid framework for the protection of vulnerable groups of workers, such as HIV positive workers, and that all vulnerable groups should enjoy the same protection (such as for sickness, disability, and so on). It does not see the Recommendation providing for this.

## EMPLOYERS

UCCAEP (Costa Rica). The division between employers' responsibilities and those of the national health authorities need to be made clearer. In Costa Rica, 97 per cent of all enterprises employ fewer than 100 workers, so the costs assumed in the draft text are far higher than can reasonably be assumed by employers.

EK (Finland). Dealing with one specific disease is not unambiguously acceptable since it may result in discrimination and unequal treatment with regard to other diseases. EK particularly questions the responsibility of employers and the workplace in situations in which the workplace plays no part in causing a disease and the problems that follow from it. The care and treatment of HIV/AIDS is mainly the responsibility of society as a whole. The discussions should only be on the instrument being adopted in the form of a Recommendation.

JCC (Jordan). The following elements are vital for the success of any policy and programme: it should be established through social dialogue; the rights of workers living with HIV should be protected; governments need to be transparent in the measures they adopt; migrant workers should be tested before entering the country; drug addiction should be combated; voluntary counselling and testing should be encouraged; people living with HIV should be actively involved in all measures taken; Arab information strategies to combat HIV and AIDS should be adopted; and the mass media should be involved.

Business NZ (New Zealand). Given the considerable variation in the extent to which different countries are affected by HIV/AIDS, it is guidance that is required, not some form of prescription. The ILO should confine what is recommended to the world of work, and not try to go beyond its mandate.

CIP (Portugal). HIV/AIDS is a public health issue and it is governments that should take action, not employers. Availability of health services, access to treatment, and so on, cannot become the responsibility of employers. Likewise, the issue of migrant workers must be dealt with between member States.

BUSA (South Africa). We support a Recommendation.

Confederation of Swedish Enterprise (Sweden). The organization does not endorse the elaboration of a Recommendation on HIV/AIDS. The ILO code of practice is an adequate tool.

## WORKERS

GSEE (Greece). Where reference is made to civil society, a reference to organizations representing persons living with HIV should be added.

ICTU (Ireland). The ICTU fully supports the ITUC's recommendations and comments. In addition, the ICTU notes that some groups may be more vulnerable to infection and impact owing to their lack of legal status or lack of human rights protection; these groups include women, children, minorities, indigenous people, poor people, migrant workers, refugees, sex workers, people who use drugs, men who have sex with men, and prisoners. In order to protect the human rights of these groups, the ICTU calls for the standard to recognize and name target and vulnerable groups, and to promote supportive frameworks of policy and law that identify how the specificity of the target groups is to be provided for.

Noting further that tuberculosis (TB) is a leading cause of HIV-related deaths worldwide, the ICTU considers that only through coordinated efforts to combat both TB and HIV can this dual epidemic be halted. It therefore calls for the standard to recognize the need for collaborative action against TB and HIV, to highlight the fact that the way in which work is organized can increase or decrease the risk of TB infection, and that action can be taken to remove and minimize the risk, underlining the need for an occupational health and safety approach. The standard should establish that leave for HIV/AIDS-related pre- and post-natal visits is accorded protection under Article 5 of the Maternity Protection Convention, 2000 (No. 183).

NZCTU (New Zealand). The NZCTU strongly supports the Recommendation, but cannot accept the New Zealand Government's suggestion that the ILO should confine itself in Recommendations or Conventions to the mandate of work. People's work lives are inextricably intertwined with social issues and economic issues outside the direct realm of their employment. In the case of HIV/AIDS, income and access to health services are significant factors in the course of HIV/AIDS and thus have an impact on work. The language of the Recommendation, being legally non-binding, needs to be strong enough for compliance and to achieve the necessary and desired change. The wording should not be softened so as to risk weakening the Recommendation.

UGT-P (Portugal). Stresses the need to place priority on HIV/AIDS in the world of work as an issue of social responsibility.

COSATU (South Africa). Proposes that a Convention be adopted by the International Labour Conference.

#### OTHER

Organizations of people living with HIV (South Africa). Prefer that a Convention be adopted.

#### OFFICE COMMENTARY

A number of comments, both general comments and those on specific provisions, suggest a possible contradiction between the provisions on confidentiality, according to which neither HIV testing nor disclosure of HIV status should be required for employment purposes, and provisions on the need to refrain from discrimination and provide treatment, care and support once a person is known or perceived to be HIV positive or suffering from AIDS. The text does, however, address both situations, as HIV infection and AIDS will often become apparent as a result of deteriorating health or following an individual's decision to seek treatment in a situation where confidentiality cannot be maintained. In this context, the Office notes that encouraging people to know and act on their HIV status voluntarily is not the same as forcing disclosure, particularly where forced testing or disclosure may result in the loss of an individual's livelihood and possibly of access to health services. The proposed text attempts to clarify further the distinction between these two elements.

A number of other comments propose confining the text more strictly to the world of work, and argue that to allow the instrument to cover persons and subjects other than workers would go beyond the ILO's mandate. Others, such as those of Norway, note that coordination and cooperation between health-care policies and work policies are of high value, and ask to expand references to families and dependants. This question was addressed extensively in the first Conference discussion, when it was decided that workers were not the only persons to whom the proposed Recommendation was addressed. Nevertheless, care has been taken to ensure that all the provisions in the draft are of direct relevance to the world of work.

Some respondents, particularly employers, stated in both their general and specific comments that many of the responsibilities outlined in the text were incumbent on governments, and expressed concern that employers might be asked to bear the burden of unsustainable costs. The text is intended to outline the need for, and desirable contents of, a national policy and programme, not to assign responsibilities to specific actors. Which sector would be responsible for different aspects of the formulation and implementation of elements of the national policy would in any event differ substantially from one country to another, depending on such factors as the size of individual undertakings, the state of the national health administration, and the gravity of the HIV/AIDS situation in the country concerned.

The use of terms such as "combat" and "fight" in relation to HIV and AIDS has been modified, although those terms have been retained in relation to discrimination and child labour when appropriate, as they have traditionally been used in ILO instruments on these subjects.

## 2. OBSERVATIONS ON THE PROPOSED RECOMMENDATION ON HIV/AIDS AND THE WORLD OF WORK<sup>8</sup>

### Preamble

#### GOVERNMENTS

*Burkina Faso.* Add “on HIV and AIDS” before 2010 in the last subparagraph of the Preamble.

*Canada.* In the seventh paragraph, retain the language that was agreed at the International Labour Conference (ILC) and follow UNAIDS recommendations by using “populations or groups at higher risk”. Some populations may be at increased risk of exposure to HIV, but behaviours, not membership of a group, place individuals in situations in which they may be exposed to HIV.

*Dominican Republic.* Third preambular paragraph: after “Noting that HIV/AIDS has a serious impact”, insert “and has political and legal implications” on society and national economies, on the world of work, on working people, on their families and on their dependants, on the social partners, on civil society organizations, and on public, private and mixed enterprises, among others. Fourth preambular paragraph: add that the conditions created make people more vulnerable to “and/or at risk of contracting this medical condition”. Fifth preambular paragraph reword as follows: “Taking into consideration that high levels of poverty, lack of information, education and awareness, and non-adherence to treatment, increase the risks of HIV transmission, mortality levels, the number of boys, girls and young persons who have lost one or both parents and the number of workers engaged in informal work, who constitute a group of persons who are more vulnerable and do not have access to health services”. Sixth and ninth preambular paragraphs: replace “workers” with “working people” (repeated for a number of other provisions below). Seventh preambular paragraph: add “among others” at the end. Twelfth preambular paragraph should read: “Noting the need to promote the provisions contained in the international labour Conventions”. Thirteenth preambular paragraph: add a reference to “governmental and non-governmental” organizations. Fourteenth preambular paragraph: add a reference to the role of education and communication.

*Greece.* Replace “relevant organizations, especially those representing persons living with HIV” with “civil society/non-governmental organizations, especially those representing people living with and affected by HIV and their associations and organizations”. Delete the phrase “Affirming the need to set an international labour standard ...”, which is redundant in light of the next two paragraphs. Moreover, the aim is not to assign responsibilities, but to stimulate action on HIV/AIDS.

*Mexico.* The enumeration should be in accordance with other human rights instruments: “Noting that” should be replaced with “Recognizing ...”, “Reaffirming ...”, “Considering ...”, and so on.

*New Zealand.* In order to recognize the non-binding nature of the Recommendation, a new first paragraph of the Preamble should read: “Noting the need to promote the international labour Conventions and taking into account ILO Recommendations and other international instruments that are relevant to HIV/AIDS and the world of work”.

*Sweden.* With regard to the fourth and fifth preambular paragraphs, recent research has shown that the causal link between poverty and heightened risk of HIV infection is questionable. It is not the poorest of the African countries that are worst hit by (that is, have the highest incidence of) HIV/AIDS, but rather the most affluent ones (those classed as “middle-income countries”, such as South Africa and Botswana). This applies at the national level. Nor does the evidence show that the causal link lies at social class/individual level. In countries with a high incidence of HIV, it is the most affluent groups, not the poorest, which have the highest prevalence. The Swedish ILO Committee urges the ILO to consult UNAIDS so as to ensure that the wording in this respect will not be misleading. In the sixth preambular paragraph, replace “suffered by persons affected by HIV/AIDS” with “due to HIV status” since the aim is to underline the fact that the stigma in itself affects people’s readiness to be tested, and so on.

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<sup>8</sup> As contained in ILO: *HIV/AIDS and the world of work*, Report V(1), International Labour Conference, 99th Session, Geneva, 2010.

## EMPLOYERS

ANDI (Colombia). The third preambular paragraph should also define the context of the Recommendation and recall that gender is one of the fundamental factors.

CGECI (Côte d'Ivoire). The relationship between poverty and HIV/AIDS should be made cautiously, and consideration should be given to the fact that sectors with a strong financial production are those attracting the poor. The wording of the text as concerns vulnerability could be interpreted as discrimination and stigmatization against women and girls.

MEF (Mauritius). The reference to vulnerable and at-risk groups, including the specific groups mentioned, is too broad. Also, given the title of the instrument, it should only cover employees.

NHO (Norway). It is important to be more careful when establishing direct links between poverty and HIV/AIDS. Likewise, assertions that women are more vulnerable to HIV/AIDS may lead to the very stigmatization and discrimination the instrument seeks to address.

CONFIEP (Peru) and UPS (Switzerland). The proposed Recommendation goes beyond the scope of the world of work.

CIP (Portugal). The text should reflect the fact that HIV/AIDS is a public health issue.

## WORKERS

CGT-RA (Argentina), ACV-CSC (Belgium), CITUB (Bulgaria), FTF (Denmark), FTUC (Fiji), CGT (France), LO (Norway), UNIO (Norway), YS (Norway), CATP (Peru), NSZZ (Poland), UGT (Spain), SFTU (Swaziland), TCO (Sweden), TUC (United Kingdom), ITUC, ITUC-Africa. Lack of adherence to treatment is caused primarily by lack of sufficient access to treatment resulting from, for instance, poor infrastructure, unsustainable treatment arrangements, and lack of sufficient information, rather than from negligence which might then be used to blame the victims of HIV/AIDS. Therefore we propose that in the fifth paragraph of the Preamble, after the words "and awareness", a reference should be added to "lack of sufficient access to treatment".

CGT (France). There should be more emphasis on the informal sector. Add to the third preambular paragraph a reference to both the formal and informal economies. In the enumeration of vulnerable groups in the seventh paragraph, refer also to the two most vulnerable groups, namely, women and men who have sex with men. Sexual orientation is not referred to until operative Paragraph 14.

GSEE (Greece). Insert: "the right to health and to a minimum level of decent living standards is a universal and global right with reference to the International Covenant on Economic, Social and Cultural Rights".

FNV (Netherlands). In the sixth paragraph, add "poverty" to the aspects that form a barrier to knowing one's HIV status.

## OFFICE COMMENTARY

Several workers' organizations proposed adding a reference in the fifth paragraph to lack of sufficient access to treatment as a factor increasing the risk of HIV transmission. This has been taken into account in the new draft, along with a suggestion to add a more general reference to the lack of confidentiality as a factor. The proposal by the CGT to add a reference to the formal and informal sectors is also reflected in the new draft.

As suggested by the Government of Sweden and some employers' organizations, the Office consulted UNAIDS, which has confirmed that the link between poverty and HIV/AIDS is more complex than the simple formulations in the earlier version of the Preamble could reflect adequately. As a consequence, the fourth paragraph of the draft has been withdrawn, along with the reference to high levels of poverty in the fifth paragraph, and elements of the third paragraph have been incorporated in the second. Some reference might be made to the impact of poverty on HIV/AIDS on the basis of more extensive research.

The CGT proposes adding a reference to additional vulnerable or at-risk groups in the seventh paragraph, and proposals to enumerate other such groups are also found in comments on different operative paragraphs. In 2009, the Conference discussed the possible disadvantages of

listing vulnerable groups, considering that listing certain groups might inadvertently suggest that attention to other groups is less important. Therefore, the Conference for the most part decided to restrict such references to a minimum. In addition, as this is the Preamble and applies to the entire text, all such groups mentioned anywhere in the text would have to be listed. In the circumstances, the Office proposes to omit any enumeration in this Paragraph.

The proposal to add a reference to the right to health and to decent living standards has been retained. The Office has, however, modified this reference to refer to the right to the “highest attainable standard of health”, in order to align the text more closely with Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1976, on which the recognition in international law of the right to health is based.

## **I. Definitions (Paragraph 1)**

### ***Definitions of HIV and AIDS (subparagraphs (a) and (b))***

As requested by the Conference Committee in June 2009, the Office held consultations with the World Health Organization and with UNAIDS in November 2009 with regard to the definitions of the terms “HIV” and “AIDS” (subparagraphs (a) and (b)). Following further written exchanges, it was agreed that the following text should be proposed to the Conference:

- (a) “HIV” refers to the “human immunodeficiency virus”, a virus that damages the human immune system. Infection can be prevented by appropriate measures. Antiretroviral therapy enables people living with HIV to lead long lives and to be able to work, but to date there is no cure for the infection. Without effective antiretroviral therapy, HIV results in the development of “AIDS” in almost all infected persons.
- (b) “AIDS” refers to the “acquired immunodeficiency syndrome”. This results from HIV infection that is not effectively treated with antiretroviral therapy. AIDS applies to the most advanced stages of HIV infection, and is defined by the occurrence of opportunistic infections or HIV-related cancers or both.

### ***Definition of persons living with HIV/AIDS (subparagraph (c))***

- (c) “Persons living with HIV/AIDS” means persons infected with HIV.

The reference in this definition to “AIDS” has been deleted in the new draft text, restoring the original language, in order to clarify that the term “persons living with HIV” includes all those who are HIV-positive but have not developed AIDS-related illnesses, as well as those HIV-positive persons who have in fact become ill. The term “persons living with HIV” is also in alignment with UNAIDS terminology guidelines. The WHO emphasized also that “People living with HIV may not know that they are infected until their immune systems become so damaged that they become unwell. HIV is spread through unsafe sex, unsafe injections and transfusion of contaminated blood products. It may also be transmitted between a mother and her infant during pregnancy, childbirth and breastfeeding”. It was concluded after further discussion that this description should be included in the preparatory materials and regarded as highly relevant to the crafting of prevention measures, although it was not, strictly speaking, part of the definition of HIV. It is also taken into account in an addition to Paragraph 16(d).

### ***Definition of “stigma” (subparagraph (d))***

#### **GOVERNMENTS**

*Australia.* The definition of “stigma” could be clarified to include rejection by society, family or individuals on account of the perceived attribute of HIV infection.

*Mexico.* We agree with the UNAIDS definition: “HIV/AIDS-related stigma can be described as a ‘process of devaluation’ of people either living with or associated with HIV/AIDS. This stigma often stems from the underlying stigmatization of sex and intravenous drug use – two of the primary routes of HIV infection”.

*Netherlands.* Suggest that “stigma” be defined as: “the pejorative perception of a person infected or affected by HIV, usually causing stigmatization and resulting in marginalization”.

#### WORKERS

BAK (Austria). Supports the use of “stigma” as used in the social sciences to indicate complex social processes of blame which are not necessarily covered by the traditional concept of “discrimination” and which also apply to the term “vulnerability”.

CGT–RA (Argentina), ACV–CSC (Belgium), CITUB (Bulgaria), FTF (Denmark), FTUC (Fiji), CGT (France), CATP (Peru), NSZZ (Poland), UGT (Spain), SFTU (Swaziland), TCO (Sweden), TUC (United Kingdom), ITUC, ITUC–Africa. In Paragraph 1(d) the definition of “stigma” has been reworded so that stigma is now partially defined by “stigmatization”, which is a circular definition. The definition agreed upon in the proposed conclusions from June 2009 should be used, adding after the word “usually” the words “causes marginalization or”.

FNV (Netherlands). Amend the definition as follows: “means the pejorative perception of a person infected or affected by HIV, usually causing stigmatization and resulting in marginalization”.

LO (Norway), UNIO (Norway), YS (Norway). Retain the definition of stigma in Paragraph 1(d) that was adopted by the Conference in 2009.

#### OFFICE COMMENTARY

The definition of “stigma” proposed in the previous report was not generally welcomed, and a number of alternatives were suggested. The one that received the most approval was based on the conclusions adopted in June 2009. It has therefore been restored in the new draft text, with the amendment proposed by a number of workers’ organizations, as a basis for discussion in 2010.

#### *Other definitions*

#### GOVERNMENTS

*Barbados.* Insert “in most cases” in the definition of HIV, and insert the following definition of “workplace”: “a place where workers need to be or to go by reason of their work and which is under the direct or indirect control of the employer”.

*Belize.* The definition of HIV needs to be reviewed, as it may give the impression that if HIV is properly treated AIDS will not develop.

*Burkina Faso.* Add “based on real or perceived HIV status” before the reference to Convention No. 111 in the definition of “discrimination” (subparagraph (e)). In the definition of “vulnerability” (subparagraph (h)) replace “susceptible to” with “more exposed to the risks of” and add at the end of the sentence the words “and finding themselves in a precarious situation”.

*Greece.* In Paragraph 1(f) replace “by HIV/AIDS owing to the broader impact of the pandemic” with “due to their relations with persons living with HIV/AIDS”, since the “broader impact of the pandemic” may affect many persons. In Paragraph 1(h) insert “gender” after “social, cultural, political”. Retain the definition of the adopted conclusions by adding two subparagraphs at the end of Paragraph 1 to read: “(i) ‘workers’ means persons working under all forms or arrangements, within the meaning of the relevant ILO instruments; (j) ‘workplace’ means any place where workers perform [work], within the terms of relevant ILO instruments”.

*Mexico.* Definitions should avoid using vocabulary that could result in stigmatization and discrimination, such as “people living with HIV”, “infected persons”, “HIV-positive persons”; these should

be replaced with “persons with HIV” and “persons with AIDS”. “Vulnerable groups” could mean both groups that have higher risks of exposure to HIV and other groups that are in a situation that makes them more vulnerable; this distinction should be made whenever vulnerable groups are referred to throughout the text. In the case of groups facing discrimination, marginalization, and so on, we recommend the use of the phrase “groups in vulnerable situations”.

*Netherlands.* We suggest using the same definitions as in the ILO code of practice to avoid confusion, unless there are specific reasons not to do so, and also suggest adding definitions of families and dependants.

*Portugal.* Change “opportunistic infections” in subparagraph (b) to “opportunistic illnesses”.

*Sweden.* In subparagraph (c), the definition should refer to “persons living with HIV”.

#### EMPLOYERS

UCCAEP (Costa Rica). In subparagraph (f), the definition of “affected persons” should reflect the fact that it concerns “workers” (replace “persons” with “workers”).

CGECI (Côte d’Ivoire). “Workers” and “workplaces” are already sufficiently defined in other standards and reference could be made to these in the Preamble.

Business NZ (New Zealand). In order to avoid too broad a definition of “affected person”, the following text is suggested: “‘affected persons’ means persons infected with HIV/AIDS whose lives have been changed owing to the impact of HIV/AIDS, including the broader impact of the pandemic”.

CIP (Portugal). “Reasonable accommodation” in subparagraph (g) should be more clearly defined.

UPS (Switzerland). The scope of subparagraph (f) needs to be reduced. Subparagraph (g) is contradictory: how can accommodation be provided if HIV status is to be kept confidential? Subparagraph (h) should not include a reference to “social exclusion” since this goes beyond employers’ responsibilities.

#### WORKERS

BAK (Austria): Suggests adding amendments to indicate that AIDS is present if “in the light of the current state of scientific knowledge” HIV infection and at least one indicator disease are found to be present.

ACV–CSC (Belgium), CITUB (Bulgaria), FTF (Denmark), FTUC (Fiji), CGT (France), LO (Norway), UNIO (Norway), YS (Norway), CATP (Peru), NSZZ (Poland), UGT (Spain), SFTU (Swaziland), TCO (Sweden), TUC (United Kingdom), ITUC, ITUC–Africa. The definition of “reasonable accommodation” reflects the text agreed upon in June 2009. However, in our opinion this definition is not clear enough as it defines “reasonable accommodation” in terms of the notion “reasonably practicable”. We propose the removal of the word “reasonably”.

GSEE (Greece). A definition of “personal data” should be added as defined in the ILO code of practice on the protection of workers’ personal data (1997).

FNV (Netherlands). Some of the definitions are in conformity with the ILO code of practice on HIV/AIDS and the world of work (2001), but others are not (for example discrimination and vulnerability). In view of the complex discussions on the definitions during the 98th Session in June 2009, we suggest that the same definitions be used as in the ILO code of practice unless there are specific reasons to do otherwise. Using different definitions may be confusing. A definition of families and dependants should be added.

UGT (Portugal). Should also provide definitions of workers, employers, workers’ representatives, and workplace health services.

UGT (Spain), TUC (United Kingdom). Paragraph 1 has been changed with the removal of the definitions of “worker” and “workplace” that were agreed upon during the 98th Session of the International Labour Conference in June 2009. This change can be accepted on condition that the text of Paragraph 2 (Scope) is amended in a way that reflects the most important parts of the removed definitions.

#### OTHER

Alliance against AIDS (AAA) (Belize). A distinction should be made between people living with HIV and people living with AIDS as it not only promotes better understanding of the difference between the infection and the disease but also assists in combating stigma and discrimination.

Organizations of PLHIV (South Africa). Understanding these concepts will enhance the commitment, participation and greater involvement of communities in the fight against the epidemic and increase support for people living with HIV. We suggest using the word “negative” before “perception” in the definition of “stigma”; adding “[with regard to] people infected or affected with HIV” after “preference” in “discrimination”; replace “are changed” with “are affected” under “affected person”; insert “without feeling discriminated” at the end of “reasonable accommodation”; and insert “conditions of” before “unequal opportunities” under “vulnerability”.

## OFFICE COMMENTARY

The suggestion to amend the definition of “reasonable accommodation” by removing “reasonably” before “practicable” would not be consistent with the usual sense of the term as used in existing ILO standards. As is stated in the *Manual for drafting ILO instruments* (paragraph 116), the term “reasonably” indicates a certain flexibility: “On the one hand, this flexibility allows the measures taken to be made commensurate with the means available. On the other hand, it emphasizes the nature of the obligation to which it applies, that is, an obligation to deploy the necessary resources and adopt the sort of conduct expected”. The possibility of adapting the measures to be taken to the means available would be negated by the removal of “reasonably”.

## II. Scope (Paragraph 2)

### GOVERNMENTS

*Australia.* Recommends that “volunteers” be included in subparagraph (a). Also, in the Australian context “persons in vocational training” normally refers to employees studying for a trade, rather than a professional qualification, so this should be amended to include any trainee.

*Belgium.* Approves of the scope of application extending to all workers and their families, including those who have lost their jobs.

*Burkina Faso.* Delete clause (i) in subparagraph (a) since it is the same as the introductory clause; delete clause (iii) in subparagraph (a).

*Denmark.* The Recommendation should cover workers to the broadest possible extent, but it should be left to national law and practice to define the workers to whom the policy under the Recommendation is applicable. On many occasions it has been emphasized that, if the subject matter of a given instrument is not limited to employed workers, or the instrument does not provide for any specific exclusion in respect of one or more categories of workers, then the term “worker” is understood to cover all workers. Furthermore, the decision whether or not to extend the coverage of ILO Convention No. 111 should be strictly a national matter. In the view of the Danish Government, equity should also be considered in relation to health status and anti-discrimination on the basis of health status.

*Greece.* In subparagraph (a), replace the word “including” with “defined as” since this may otherwise be in contradiction with national laws. Delete clause (i) since persons in managerial and supervisory positions are also employees, and are therefore included in the term “workers”. Delete “jobseekers” in clause (iii) of subparagraph (a) since the requirement for protection can only start at the moment a person applies for a job.

*Netherlands.* Subparagraph (a) should be worded: “all workers working under all forms of arrangements, and at all workplaces, including:”. Subparagraph (c) mentions “armed forces and uniformed services”. It is important that if specific groups are mentioned, sex workers should also be included. They are very often not regarded as workers, but their activity is work, and they are an important group at risk. If sex workers are not mentioned in this Recommendation, we strongly suggest that the armed forces and uniformed services not be mentioned either.

*United States.* Paragraph 2(a)(iii) is in keeping with the broad scope of coverage clarifying that the Recommendation's provisions cover not only those who have applied for a specific job, but also those who are unemployed and in the process of seeking work.

#### EMPLOYERS

CNT (Belgium). In Paragraph 2(a), in order to ensure that all different types of employment contracts are included, the reference should be to "all forms of work-related relationships" instead of the specific enumerations, since that also entails the risk of excluding one.

ANDI (Colombia), UCCAEP (Costa Rica), CGECI (Côte d'Ivoire), BDA (Germany), NHO (Norway), CONFIEP (Peru) and CIP (Portugal). If the Recommendation covers those not currently in an employment relationship, including jobseekers and job applicants, it will require employers to provide HIV/AIDS support services for non-employees and make these persons the responsibility of employers, when they should properly be the responsibility of governments.

MEF (Mauritius). The employment contract is the basis for coverage, so jobseekers and job applicants should not be included.

BUSA (South Africa). Qualify Paragraph 2(a)(ii) with the words "at the workplace". In Paragraph 2(a)(iii), being a jobseeker means not being employed as yet and hence includes the entire community of unemployed individuals. We would also like a clarification of the status of retirees/retrrenched employees. With respect to Paragraph 2(a)(iv), more information is needed to guide BUSA in order to ensure that HIV-positive workers on antiretroviral (ARV) treatment who lose their employment are referred to the appropriate government institution or NGO.

#### WORKERS

CGT-RA (Argentina). Replace Paragraph 2(a)(iv) with: "workers partially laid-off and persons who are temporarily out of work".

BAK (Austria). For Paragraph 2(a)(iii), clarification may be necessary in relation to the scope of application in national legislation (it is unclear if "free employees" under Austrian legislation are to be covered). As concerns Paragraph 2(b), BAK welcomes the inclusion of the informal economy, but some parts of the informal economy are not adequately reflected, especially with respect to sex work, which in member States can come under either informal work or the formal sector (as in Germany and the Netherlands). It is especially important, in the interests of prevention, to develop appropriate protective measures in the form of OSH laws that can be implemented. Excluding sex work and making it into a taboo is counterproductive and dangerous in terms of effective HIV/AIDS prevention. Some groups of sex workers have joined together to form NGOs or trade union bodies and are in a position to defend their interests in collective bargaining (in Austria, for example, organizations like Sophie and Lefö). In addition, section 4 of the Austrian AIDS law makes it an offence for individuals who are found to be infected with HIV to engage in or tolerate sexual acts involving their own bodies for material gain. This is the only instance in Austria of a legal restriction on the free exercise or choice of occupation.

CNT (Belgium). See employers' comments.

ACV-CSC (Belgium), CITUB (Bulgaria), FTF (Denmark), FTUC (Fiji), CGT (France), FNV (Netherlands), CATP (Peru), NSZZ (Poland), UGT (Spain), SFTU (Swaziland), TUC (United Kingdom), ITUC, ITUC-Africa. The explicit inclusion of laid-off workers, jobseekers and armed forces personnel is strongly supported. In 2009, the Conference Committee discussed a definition of "workers" that would include persons working under all forms or arrangements as referred to in ILO instruments such as the Occupational Safety and Health Convention, 1981 (No. 155), and the Employment Relationship Recommendation, 2006 (No. 198). The proposed definition under "Scope" does not include a number of intermediate arrangements such as partial self-employment and arrangements in which unemployed people can acquire practice at workplaces without being granted the legal status of workers. The scope should also include workers seeking to migrate for employment who are not yet engaged in an employment relationship with an individual employer, as dealt with in Paragraph 26. There is a need to amend the proposal further in a way that reflects the most important parts of the definitions of "worker" and "workplace" which were removed from Paragraph 1. Instead of the text proposed by the Office, we propose: "(a) all workers working under all forms or arrangements, and at all workplaces, including ...".

GSEE (Greece). A specific reference to both the maritime sector and transportation should be added in Paragraph 2 as these constitute high-risk groups. Paragraph 2(a)(ii) should include "apprentices".

FNV (Netherlands). It is of great importance that if certain groups of workers are included in Paragraph 2(c), sex workers should also be mentioned. They are so very often not regarded as workers, although their activity is work and they are an important group at risk. If sex workers are not mentioned, we strongly suggest that armed forces and uniformed services should not be mentioned either.

LO (Norway), UNIO (Norway), YS (Norway). We strongly support the inclusion of laid-off workers, jobseekers and armed forces.

UGT (Portugal). The employment relationship should also be defined.

#### OFFICE COMMENTARY

The intent is that all forms of employment and professional relationship should be covered, and this has been accepted by all respondents. The amendment proposed by a group of workers' organizations to Paragraph 2(a) appears more comprehensive and has been retained. As concerns the comments by BAK (Austria), national laws that create schemes specific to the national context should be reviewed in establishing and implementing a national HIV/AIDS policy to ensure that these are taken into account. A reference to all forms of trainees has been added to Paragraph 2(a)(ii) in the interests of clarity. A reference to volunteers has also been included, as they would not appear to fall under any of the employment-related criteria.

As concerns references to specific occupations, it has generally been accepted in this discussion that listing specific groups should be avoided so that others are not excluded by implication, unless particular reasons are found to list them. The reason for including the armed forces and uniformed services in the report adopted by the Conference in 2009 was that they are often specifically excluded from national labour legislation and from some international labour standards; it therefore seemed appropriate to mention them specifically. It appears clear from the context that sex workers are covered, whether they are in the formal or informal sectors in a particular country. The maritime sector and transportation are also covered by implication, as are all other occupations including, for instance, health-care workers who are also at high risk in this context.

Several employers' organizations have expressed concern that referring to workers not currently employed would place responsibilities on employers for persons they do not employ. The proposed Recommendation does not assign responsibility in this regard to any particular segment of the economy, in particular to employers, but instead provides simply that the national policy should be developed so as to cover such persons.

### III. General principles (Paragraph 3)

#### GOVERNMENTS

*Australia.* We recognize that exclusion clauses relating to mandatory testing or disclosure of an individual's HIV status are in contradiction with other international labour standards and decisions of UN bodies. However, consideration should be given to reflecting the fact that in certain situations (such as those of health-care workers), individuals should at least be aware of their HIV status if they are performing an exposure-prone procedure, or if their normal work duties could endanger others. This should also apply if they have potentially exposed another employee to infection or when there is the potential to affect the health and safety of others.

*Barbados.* In Paragraph 3(b), insert at the end "and non-governmental organizations".

*Belgium.* In Paragraph 3(h) the general prohibition of mandatory HIV testing for employment purposes is fully in accordance with Belgian legislation.

*Burkina Faso.* The version without "or job applicant" in subparagraph (h) is preferred. Add after "HIV status" the words "[and] all testing should be accompanied by pre- and post-counselling". At the

same time, delete Paragraph 23 since it also expresses a general principle of protection of the right to privacy and confidentiality. Keep the text in the adopted subparagraph (b) in the conclusions since it is more comprehensible. Add at the end of the sentence the words “and to lodging” in subparagraph (i).

*Canada.* Replace Paragraph 3(b) with the following text: “HIV/AIDS should be recognized as an episodic disability, which is marked by fluctuating and unpredictable periods and degrees of wellness, and national policies should consider the income security, health benefits access and accommodation needs resulting from its episodic nature”. “Episodic disability” is a term used to describe conditions such as multiple sclerosis, HIV/AIDS, lupus, hepatitis C, and some forms of mental illness, cancer and arthritis. Features that distinguish episodic disabilities from “traditional” disabilities are their unpredictability, and alternating episodes and degrees of illness and wellness, both of which can force people out of the workforce for a time and allow them to return to work later.

*Dominican Republic.* In Paragraph 3(f), add “policies [and]” before “programmes”. Paragraph 3(h): insert after HIV status “for employment purposes or in order to receive health services”.

*Finland.* Reinsert the phrase “the protection of workers in occupations that are particularly exposed to the risk of HIV transmission.” (point 6(j) of the proposed Conclusions adopted in the 2009 session of the Conference).

*Greece.* In subparagraph (c) replace “job applicants” with “persons covered by this Recommendation”; in subparagraph (d) replace “means of HIV transmission” with “modes of HIV transmission at workplaces and access to all preventive strategies”; in subparagraph (h) emphasis on voluntary counselling and testing should be reinforced by inserting at the end “nevertheless, voluntary counselling and testing should be promoted”.

*Mexico.* Reference should be made to informed consent for voluntary testing.

*Netherlands.* Paragraph 3(g) should be worded: “workers and their families and dependants should enjoy protection of their privacy ...” and so on. Many aspects relevant for workers are also relevant for their families.

*New Zealand.* The Government stands by its policy of testing migrant workers, as they would be entitled to publicly funded health care (generally provided for workers who will be in the country for more than two years). HIV testing for migrants is provided for under the Government’s Recognized Seasonal Employer Immigration Scheme, under which the period of employment can only be for up to seven months and which requires HIV testing for migrant workers coming from countries deemed to have high AIDS risk factors, including countries where at least 1 per cent of the adult population is estimated to have HIV/AIDS.

*South Africa.* There is a need to review procurement policies to ensure access to prevention benefits for workers’ families. Consideration should be given to adding principles of continuity of care and partnerships, including linkages with health centres, well-established referral mechanisms and alignment with approved national health protocols and regimens.

## EMPLOYERS

UCCAEP (Costa Rica). These provisions are confusing. Subparagraph (e) could be read to mean that specific health services should be provided for workers living with HIV. Health services should be provided by health institutions in each member State, not by employers. HIV-positive workers should have access to employment, but at some point they should inform their employer of their HIV status so that the employer can take the necessary measures.

BDA (Germany). The reference in Paragraph 3(e) to the role workplaces can play in facilitating access to services should be limited, and employers should not take on the State’s responsibility.

MEF (Mauritius). This section is too long and is a repetition of the ILO code of practice.

CONFIEP (Peru). The employers’ role should be reviewed.

CIP (Portugal). HIV/AIDS should be treated on an equal footing with other chronic illnesses.

BUSA (South Africa). With respect to Paragraph 3(i), UNAIDS endorses the “Three Ones” principles (one strategy, one monitoring and evaluation plan, one coordinating body). The policies and programmes should be in keeping with the Country Strategy.

UPS (Switzerland). Insert in Paragraph 3(b) before “affects” the word “also”; Paragraph 3(c) should indicate that discrimination should not take place as long as there is no conflict with the requirements of the job. Paragraph 3(g) is far too broad since it goes beyond HIV/AIDS. Paragraph 3(h) should provide for exemption from compulsory testing and disclosure only as long as that does not conflict with the requirements of the job.

#### WORKERS

BAK (Austria). Paragraphs 3(c) and 3(h) are strongly welcomed, and BAK considers the responsibility of employers to be of particular importance.

CGT (France). Delete the reference in Paragraph 3(a) to “their families and their dependants” since this is included in Paragraph 3(e).

FNV (Netherlands). Amend Paragraph 3(g) as follows: “workers and their families and dependants should enjoy protection of their privacy ...”. Many aspects that are relevant for workers are also relevant for their families.

NZCTU (New Zealand). The NZCTU cannot under any circumstances support mandatory testing. Testing for migrant workers places them at great risk of marginalization and discrimination in their home countries and also raises issues about treatment privacy. We therefore have significant concerns about the national “Recognized Seasonal Employer Immigration Scheme”.

#### OFFICE COMMENTARY

This section is meant to give general expression to basic principles that are enunciated in more detail elsewhere in the text. The important role of the workplace in the response to HIV has been highlighted in subparagraph (e) by replacing “can” with “should”. The addition of “social protection” in subparagraph (i) in the new text is intended to respond to a number of comments on the breadth of the principles. Australia raises an important point which it would appear more appropriate to examine in conjunction with comments on the more complete expression of this principle in Paragraphs 23 to 26.

### **IV. National policies and programmes (Paragraphs 4 to 33)**

#### GOVERNMENTS

Greece. Replace “and on” in Paragraph 4(a) with “including”, since OSH is part of the world of work.

*Dominican Republic.* Paragraph 5: insert “national legislation [and]” before “the code of practice, and refer to “documents related to this health condition, whether ILO instruments or instruments of another international body”. In Paragraph 6, amend to “consultation with and with the participation of the most representative ...”, and insert “civil society” before “organizations”. After “health” and before “sectors”, insert “education, labour and others”.

*New Zealand.* Replace “should” by “should consider” with appropriate editorial adjustments, to recognize the non-legally binding nature of the Recommendation.

*South Africa.* Paragraph 4(b) should refer to the need to accelerate “mainstreaming of HIV and AIDS (both external and internal) into sector strategic plans”. Insert a new subparagraph (c) in Paragraph 4 referring to “dealing with mainstreaming of HIV/AIDS, human rights, gender and disabilities”. In Paragraph 7, referring to the fact that governments are already working with local communities will strengthen this Recommendation.

## EMPLOYERS

UCCAEP (Costa Rica). The tripartite consultation provided for in Paragraph 6 is fundamental.

CIP (Portugal). Adoption of national policies and programmes is the responsibility of governments, not employers.

BUSA (South Africa). Rephrase Paragraph 4(b) to read: “integrate their policies and programmes on HIV/AIDS and the world of work in broader health/wellness initiatives, development plans and poverty reduction strategies, as appropriate”. For Paragraph 7, the support and collaboration of local health authorities for testing and treatment is critical. If BUSA members are to provide for testing, they must provide access for employees who want ARV therapy. ARV therapy requires close collaboration with local health authorities to ensure the proper recording of data, as well as referral processes if patients are referred to the State for treatment.

UPS (Switzerland). Paragraph 4 focuses too much on the world of work, but the issue is much wider.

## WORKERS

CGT (France). Members should also provide the resources for implementing these policies and programmes. Paragraph 4(a) should be amended by adding a reference to the need to provide the means to implement them. Paragraph 7 should also take into account the fact that there is no border between enterprises and their environment, particularly with regard to the impact of economic activity on local communities in the development of the pandemic. Add the following sentence in the middle of the paragraph (after “voluntary counselling and testing”): “including its impact on economic activities for the development of the pandemic within local communities, for example by promoting voluntary counselling and testing in collaboration with those communities”. The informal sector is not fully covered by the text and we therefore suggest adding the following text: “When elaborating programmes and policies, Members should give particular attention to combating HIV/AIDS in the informal sector, particularly in giving priority to its structures”.

GSEE (Greece). Paragraph 5 should also include a reference to collective labour agreements containing provisions on the protection of workers with HIV/AIDS.

CGTP-IN (Portugal). Paragraph 4 should provide that the national programmes and policies on HIV/AIDS should also integrate national development plans and strategies to combat poverty. Workers’ rights to privacy and confidentiality should be the basic principle and limited only in clearly established national law.

UGT-P (Portugal). National programmes and policies should also provide for action to be taken in case of alleged discrimination, breach of confidentiality and other breaches of the principles enumerated.

## OTHER

Organizations of people living with HIV (South Africa). For Paragraph 4, mainstreaming should be done through integrated and comprehensive programmes in all departments and areas of work for maximizing benefit and enforcing compliance. In Paragraph 5, national policies should be informed by the conditions fuelling the epidemic and develop responses that will have an impact at community level. In Paragraph 6, HIV/AIDS is a social and developmental problem which makes it important that the development of policies should include all known players for it to meet the needs of the community. As concerns Paragraph 7, local communities play a major role in making sure that people’s views at the local level are included in the development of programmes. Community base structures should be involved in disseminating information to the community so that more people can benefit from services provided to reduce the impact of the epidemic.

## OFFICE COMMENTARY

In Paragraph 5, in response to the comments made, the term “relevant documents” has been replaced with “international guidelines adopted on this subject”, in order to clarify that this includes relevant guidance issued by international bodies.

***Discrimination and promotion of equality  
of opportunity and treatment  
(Paragraphs 9 to 14)***

## GOVERNMENTS

*Austria.* In Paragraph 10, after “continued employment”, insert “or the award of a commission or contract to the person in question”. As concerns Paragraphs 11 to 13, under Austrian law, termination of employment does not necessarily require a reason to be given, although it is not permissible to discriminate against individuals on specific grounds such as sex, ethnicity, religion or world view, age or sexual orientation in such cases.

*Canada.* It would not be appropriate to refer specifically to the Termination of Employment Convention, 1982 (No. 158), in Paragraph 11 until its status has been confirmed. Paragraph 14(c) should be in a separate subparagraph in order to recognize that violence and harassment in the workplace can be directed at both men and women.

*Czech Republic.* Supports the inclusion of “protection equivalent to” in the reference to Convention No. 111 in Paragraph 9.

*Dominican Republic.* In Paragraph 9, add “[and] civil society” after “employers’ and workers’ organizations”. In Paragraph 10, replace “should not be a cause to prevent” with “should not be a condition to be taken into account for purposes of recruitment”. In Paragraph 11, after the first line, begin a new Paragraph 12 beginning with “Temporary absences ...”. Insert after “caregiving duties related to HIV or AIDS” the phrase “for the worker’s dependants” and insert after “(No. 158)” the phrase “as enterprise policy, in the same manner as absences for other health reasons”. In Paragraph 12, “employers should seek guidance from the competent bodies and should ensure their effective and transparent implementation”. Replace Paragraph 13 with: “In the event that the worker, owing to his/her HIV status, cannot continue to carry out the same functions, the adoption of measures should be encouraged to facilitate redeployment and/or change of shift in the same workplace. The necessary measures should be taken to offer the worker additional training, in order to facilitate his or her ability to find a new position in the same workplace, taking into consideration the requirements of the relevant ILO and United Nations instruments”. In Paragraph 14, add a reference to gender violence in subparagraph (b), and add “governmental and non-governmental organizations” in subparagraph (c).

*Greece.* Delete “real or perceived” in Paragraphs 9, 10, and 11 to avoid interested persons from all sides from misusing such an explicit provision. No other anti-discrimination instrument refers “to perceived status”. In Paragraph 14(b), replace “violence and harassment in the workplace” with “all kinds of violence, direct or indirect discrimination on the grounds of sex, harassment and sexual harassment in the workplace”.

*Mexico.* Add at the end of Paragraph 10 “or their equal opportunities to be promoted”. In Paragraph 13, add a reference to the right to the promotion of and access to rehabilitation programmes for AIDS-infected workers already partly incapacitated, to allow their reintegration into work.

*Netherlands.* Paragraph 9 should read: “Governments, in consultation with the most representative employers’ and workers’ organizations, should consider determining under Article 1(1)(b) of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), that the protection afforded under that Convention extends to discrimination based on real or perceived HIV status”. Since this is an important issue, it is essential that this Paragraph be more strongly defined. Discrimination leads to exclusion of the worker in social life. It also leads quite easily to non-treatment and therefore has a potentially serious impact on those who are not (yet) infected. We strongly support Paragraph 14.

*Sweden.* Paragraph 14(e) should be worded, as is customary, to read “sexual and reproductive health and rights”.

*United States.* Supports the Office’s proposed text for Paragraph 9.

#### EMPLOYERS

*ANDI (Colombia).* Convention No. 158 is applicable only if it has been ratified. Paragraph 11 should be redrafted to include a reference to national laws and policies.

*UCCAEP (Costa Rica).* Temporary absences (Paragraph 11) should be justified.

*SEV (Greece).* There is some concern that the reasonable accommodation measures referred to in Paragraph 13 would also apply to all cases and types of work, such as infant care, shops selling fresh baby food, and so on.

*Business NZ (New Zealand).* In order for employers to take any action to reduce discrimination against workers with HIV and to reduce transmission, they would need to know that the infection is present in the workplace. However, since this is not foreseen in the text, it would make more sense in Paragraph 14 not to link reduction of HIV transmission and alleviating its impact directly to measures to combat discrimination and the promotion of equality of opportunity and treatment. Accordingly, discrimination and the promotion of equality of opportunity and treatment should stand on their own. We suggest the following introductory words to Paragraph 14: “Measures should be taken in or through the workplace to promote ...”.

*EFP (Pakistan).* Paragraph 13 should also take into consideration workers’ fitness when providing accommodation.

*UPS (Switzerland).* With respect to Paragraph 10, we agree as long as there is no conflict with the requirements of the job. Paragraph 11 should be open for discussion for other illnesses and diseases. Paragraph 13 assumes that employers know workers’ HIV status, but other parts of the text provide for confidentiality, thus indicating a contradiction. Paragraph 14 exceeds employers’ obligations.

#### WORKERS

*CGT–RA (Argentina), ACV–CSC (Belgium), CITUB (Bulgaria), FTF (Denmark), FTUC (Fiji), CGT (France), FNV (Netherlands), LO (Norway), UNIO (Norway), YS (Norway), UGT (Spain), NSZZ (Poland), SFTU (Swaziland), TCO (Sweden), TUC (United Kingdom), ITUC, ITUC–Africa.* The current text of Paragraph 9 does not ensure the full protection envisaged by Convention No. 111. It should not be left to each government to “consider affording protection equivalent to that available under” Convention No. 111. A resolution should be adopted to call for a start to the procedure to amend that Convention, in order to include in its Article 1(a) “discrimination based on real or perceived HIV status” in the general definition of discrimination. The current wording of Paragraph 9 should be replaced with the following: “Governments, in consultation with the most representative employers’ and workers’ organizations, should extend, under Article 1(1)(b) of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the protection afforded under that Convention to discrimination based on real or perceived HIV status”.

*AKAVA (Finland), SAK (Finland), STTK (Finland).* In Paragraph 9, any threat to reduce the protection afforded by Convention No. 111 must be rejected.

*GSEE (Greece).* Paragraph 14(b) should also include a reference to the prevention of discrimination based on sexual orientation.

*COSATU (South Africa).* The word “perceived” is being used, which we believe is just an allegation, and we would like the ILO not to promote these kinds of words, especially since workers are already stigmatized. We therefore suggest the following text for Paragraph 10: “A person’s HIV status should not be a cause to prevent her or his recruitment or continued employment”. Replace Paragraph 11 with: “A person’s HIV status should not be a cause for termination of employment. Temporary absences from work because of illness or caregiving duties related to HIV and AIDS should be treated in the same way as absence for other health reasons, taking into account the Termination of Employment Convention, 1982 (No. 158).”

## OTHERS

Pan-American Social Marketing Organization (PASMO) (Belize) supports the exclusion of “gatekeepers”, but more emphasis needs to be included with regard to familial power dynamics, given its impact on the acceptance of HIV prevention services, education, reproductive health services and so on.

Organizations of people living with HIV (South Africa). Stigma and discrimination make it impossible for communities to access available services, and government policies should address the issues and maintain compliance for the benefit of those infected and affected by HIV and AIDS. In Paragraph 14(e), add “people with disabilities”, so that the text reads: “the protection of sexual and reproductive health and sexual and reproductive rights of women and men, including persons with disabilities”.

## OFFICE COMMENTARY

With regard to the reference to the Termination of Employment Convention, 1982 (No. 158), its status is under examination but for the moment it is considered to be in force and appropriate for promotion. Developments as to the status of Convention No. 158 can be reconsidered at the time of the Conference discussion in 2010.

As concerns Paragraph 9, it was explained in the previous report that the formulation adopted by the Conference in 2009 affords a lower level of protection than that contemplated in Article 1(1)(b) of Convention No. 111. While opinion remains divided on the correct formulation, a majority of the replies received favour the restoration of the earlier wording. The proposal by a group of workers’ organizations goes somewhat further than is contemplated in Convention No. 111. The earlier text is accordingly included in the new draft, as proposed by the Governments of the Netherlands and the United States and has been reworded to align this provision more closely with the language of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), to which it refers.

No reservations have previously been expressed about the term “real or perceived” HIV status, which is meant to convey the idea that discrimination and prejudice can arise from a perception, often based on stereotypes, that a person belongs or appears to belong to a group that may be perceived as being particularly likely to be HIV-positive. This and similar terms are often used in the context of UNAIDS.

Paragraph 13 has been reworded, following an internal review and in light of comments made, to reflect more clearly the sense of the discussion in the Conference in 2009. The words “including medical data” have been added to Paragraph 14(f) as a matter of clarification following an internal review of the discussion in the Conference.

*Prevention (Paragraphs 15 to 16)*

## GOVERNMENTS

*Argentina.* In Paragraph 16(a), “accurate and relevant information” should be replaced with “up to date and sufficient information”.

*Australia.* A new subparagraph should be inserted in Paragraph 16 to address injection drug use in the workplace.

*Canada.* Paragraph 16(e) should reflect the outcome of the Committee discussion in June 2009.

*Dominican Republic.* In Paragraph 15, add a reference to “vulnerability and risk, among others”. In Paragraph 16(a), add that information should be “appropriate” and that it should be adapted to different contexts, including cultural, social, educational and economic.

*Greece.* Merge subparagraphs (b) and (g) of Paragraph 16 so that subparagraph (b) ends with “and effective measures to reduce risk behaviours for all workers, including most-at-risk groups, with a view to

reducing the incidence of the HIV pandemic”; and insert at the beginning of subparagraph (e) “where appropriate”.

*Mexico.* In Paragraph 16(a), add that information should also be made available for workers with disabilities. In Paragraph 16(d), reference should be made to informed consent for voluntary testing.

*Netherlands.* Change Paragraph 16(a) to read “that evidence-based and relevant information is made available to all in a culturally sensitive format and language”. Paragraph 16(f) should refer to: “comprehensive harm reduction strategies”, and this subparagraph should be placed after Paragraph 16(g), since harm reduction comes logically after effective measures as a last resort. Comprehensive harm reduction includes nine interventions as mentioned in the WHO/UNODC/UNAIDS technical guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users (2009), as well as legal reform and capacity building for police and prison officers. Paragraph 16(g) should read: “effective measures to reduce high-risk behaviours for all workers, including bigamy, injecting drug use, men-to-men transmission and visiting sex workers, with a view to reducing the HIV pandemic”. It is important that measures be taken in regard to specific behaviour; “reducing the incidence of the HIV pandemic” does not seem to be the right way of expressing it. A new subparagraph (h) should be added in Paragraph 16 as follows: “a dialogue with the social partners with the goal of ensuring a living wage for as many workers as possible, in order to keep especially female workers from engaging in sex work against their will”. There are a number of known situations in which women have a job and work six or seven days a week, but cannot earn enough for themselves and their children. Many of them, out of despair, decide to sell their bodies in the evening and thus risk HIV infection. Information about safe sex does not eliminate this appalling situation. The ILO introduced the Decent Work Agenda and included the need for a living wage, which in this case is a key issue. For women in poverty, it is very important for the ILO HIV/AIDS Recommendation to include a reference to the need for a living wage.

*South Africa.* Consensus is required regarding what constitutes “most-at-risk groups” as compared to the UNGASS definition.

#### EMPLOYERS

CNT (Belgium). In Paragraph 16(g), while recognizing the gains from including as many as possible in the scope for preventive measures, we suggest that it could profit from referring explicitly to certain groups for specific measures adapted to them, for example, occupational health personnel and those engaging in remunerated sexual activities.

UCCAEP (Costa Rica). Paragraph 16(e) should refer to all different methods to reduce the risk of HIV transmission, but employers cannot be obliged to provide free condoms at the workplace.

EFP (Pakistan). Dissemination of information should also be done in schools and voluntary testing should be affordable.

UPS (Switzerland). It is important that the prevention strategies referred to in Paragraph 15 are adapted to the national situation as well as to the workplace. Paragraph 16 concerns the government’s responsibilities.

#### WORKERS

CNT (Belgium). See employers’ comments.

FNV (Netherlands). Subparagraphs (a), (g) and proposed new subparagraph (h) in Paragraph 16: See Netherlands Government comments.

#### OFFICE COMMENTARY

In Paragraph 16, subparagraph (a) has been supplemented, and the suggestion to change the order of subparagraphs (f) and (g) has been adopted. The words “as soon as possible” have been added to subparagraph (d), in response to the points made by the WHO under the definitions in Paragraph 1. The proposal by the Netherlands to implement decent work strategies, and in particular income generation as a preventive strategy, appears to have considerable merit, and the Conference may wish to pursue it further in June 2010. Such a provision may not, however, fit

comfortably in this part of the proposed instrument, which is concerned with more direct preventive measures.

### *Treatment and care (Paragraphs 17 to 19)*

#### GOVERNMENTS

*Argentina.* After “proper nutrition” in Paragraph 17(c), add “and appropriate information on breastfeeding (for women workers) in appropriate cases”.

*Barbados.* Insert in the introductory subparagraph of Paragraph 17, after “health”: “and other support”.

*Greece.* In Paragraphs 17, 18 and 19, replace references to workers’ and their families and dependants with “affected persons”.

*Netherlands.* Paragraph 17(b) should be amended to read: “effective and safe antiretroviral treatment including second-line treatment if needed and adherence education as well as the necessary medical, laboratory and other biological monitoring”. Sometimes treatment causes unnecessary side effects or is not effective owing to drug resistance, and in both cases the impact may be severe. Paragraph 17(d) should be amended to read: “treatment for opportunistic infections and sexually transmitted infections, and any other related illnesses, specifically TB”. TB should be mentioned specifically since it is so strongly related to HIV/AIDS and is a major cause of death for AIDS patients.

*South Africa.* In Paragraph 17, as initiated by the client or health-care provider.

*Sweden.* In Paragraph 18, replace “workers living with HIV” with “workers living with HIV/persons living with HIV”.

#### EMPLOYERS

CNT (Belgium). Paragraph 17 should be amended to reflect point 22 of the conclusions adopted in June 2009.

Business NZ (New Zealand). The word “prevention” should come before “support” in Paragraph 17(e).

BUSA (South Africa). Insert: “Member States should ensure that ...” at the beginning of Paragraph 17.

UPS (Switzerland). Paragraph 17 goes beyond the ILO’s mandate. In Paragraph 19 insert “compulsory” before “social security systems”.

#### WORKERS

CNT (Belgium). See previous comments.

ACV–CSC (Belgium), CITUB (Bulgaria), FTF (Denmark), FTUC (Fiji), AKAVA (Finland), SAK (Finland), STTK (Finland), LO (Norway), UNIO (Norway), YS (Norway), CATP (Peru), NSZZ (Poland), UGT (Spain), SFTU (Swaziland), TCO (Sweden), TUC (United Kingdom), ITUC, ITUC–Africa. As concerns Paragraph 17, the explanation that point 22 of the conclusions has been partially integrated into Paragraph 17 is noted. Nevertheless, we insist on reinserting the omitted portion of the text, as its omission undermines our basic mandate in terms of collective bargaining and consultation on workplace policies.

CGT (France). Free or affordable access to ARV treatment is an essential part of the combat against HIV/AIDS, with global support, including the right to access to medication, psychological support, and so on, which is not taken into account in the text as it stands. We therefore suggest that the text be amended to read as follows: “full support, including access to antiretroviral treatment, biological and psychological monitoring, and training for adherence to treatments”.

FNV (Netherlands). Subparagraphs 17(b) and (d) should be amended as proposed above by the Government of the Netherlands.

COSATU (South Africa). In Paragraph 19, delete “real or perceived”.

## OFFICE COMMENTARY

Point 22 of the 2009 conclusions has been included as a new Paragraph 18, and subsequent Paragraphs have been renumbered. It would not appear appropriate to replace the existing Paragraph 18, so both have been retained. The reference to employers was inadvertently omitted in the text of point 22 adopted at the 2009 session of the Conference, and has now been added to new Paragraph 17 in order to clarify that the workplace health interventions contemplated are to be determined by the Members in consultation with both employers and workers and their representatives. A reference to TB has been added to subparagraph (d) in Paragraph 18, and to psychosocial support in subparagraph (e) (the term used by UNAIDS in preference to “psychological”). In order to make the text more comprehensive, Paragraph 19 has been reworded to reflect that health care may be provided for under social security systems, private insurance “or other” schemes.

### *Support (Paragraphs 20 to 22)*

#### GOVERNMENTS

*Dominican Republic.* In Paragraph 21, reference should be made to the revised List of Occupational Diseases adopted during a Tripartite Meeting of Experts at the ILO in October 2009 within the framework of Recommendation No. 194. Replace “HIV/AIDS” with “HIV”.

*Greece.* In order to ensure wider coverage, in Paragraph 20, insert “living with HIV/AIDS and” before the phrase “with HIV-related illnesses”.

*Sweden.* In Paragraph 22, replace “persons living with HIV” with “workers living with HIV/persons living with HIV”.

#### EMPLOYERS

UCCAEP (Costa Rica). Paragraph 21 should emphasize the word “should” and the reasonability of accommodation must also take into account the confidentiality issue. In Paragraph 22, it is important that the link is clearly established.

EK (Finland). In Paragraph 21, when diagnosing accidents and occupational diseases and defining their causes and effects, causes other than those related to work have to be clarified. Just mentioning a possible work-related link is not enough. Instead, the text needs to include the following point: “[and] when other possibilities of becoming infected have properly been excluded”.

BDA (Germany). The wording in Paragraph 20 is too ambiguous: is special accommodation necessary for workers with HIV-related illnesses other than existing staff rooms? Paragraph 21 should only apply where there is a direct link of infection from an occupational activity, to ensure that infection risks outside the workplace are taken into account.

Business NZ (New Zealand). The direct link in Paragraph 21 between an occupation and the risk of infection should be restated as being between an occupation and the source of infection. In addition, for HIV/AIDS to be occupational in character there must be a direct link between the occupation itself and the infection source.

UPS (Switzerland). This section assumes that a person’s HIV status is known, although according to other parts of the Recommendation it should remain confidential.

#### WORKERS

CGT (France). The wording in Paragraph 20 (“with due regard to national conditions”) is too vague and could risk weakening the Paragraph. It should be removed.

## OFFICE COMMENTARY

A reference to persons living with HIV has been added to Paragraph 20, as proposed by Greece, as this appears consistent with the approach taken elsewhere in the proposed instrument.

*Privacy and confidentiality (Paragraphs 23 to 26)*

## GOVERNMENTS

*Australia.* The Government agrees to the principle established in Paragraph 23, but under the Australian 2006 testing policy, health-care workers have an obligation to know their status if involved in exposure-prone procedures, and they cannot perform these if they are HIV-positive.

*Belgium.* If there is a national health requirement that a migrant worker's HIV status be disclosed on entry into the country, national authorities should ensure that they are not faced with any discrimination in their access to work.

*Canada.* Paragraph 25 should reflect the outcome of the Committee discussion in June 2009.

*Czech Republic.* With respect to disclosure, in certain extraordinary and justified cases, it is necessary for an employer to have sufficient information on an employee's health status because of the possible danger to other persons. Insert "except in very exceptional and specific cases determined by reasons of occupational safety as defined in national legislation established in consultation with employers' and workers' organizations".

*Finland.* As concerns Paragraph 25, restore the text that has been taken out ("... except in very exceptional and specific cases determined by reasons of occupational safety and health as defined in national legislation that is established in consultation with employers' and workers' organizations"). The formulation was presented as a unanimous IMEC statement and approved for inclusion in the text.

*Greece.* Delete Paragraph 26, since migrants are already covered and seeking to migrate goes beyond the world of work.

*Mauritius.* In relation to Paragraph 26, current national legislation requires migrant workers to be tested and if the instrument is adopted with the current text, the legislation would require amendment.

*Netherlands.* The title should be replaced with "Privacy, confidentiality and HIV testing". Paragraph 23 should include an explicit reference to migrant workers to read: "HIV testing or other forms of screening for HIV should not be required of workers, including migrant workers and job applicants". We strongly support Paragraph 25. However, referral to the ILO code of practice on the protection of workers' personal data (1997) will unfortunately not be adequate for this Paragraph, since it does not rule out the possibility that countries may still require information on HIV testing. Paragraph 26 should be amended to read: "Members, whether receiving or sending countries, should ensure that migrant workers, and those ...".

*Poland.* Amend Paragraph 25 to restore the possibility of requiring disclosure of HIV status for employment purposes when a specific job requires a very good state of health and to prevent the worsening of the immune system.

*Sweden.* Replace the heading with "Testing, privacy and confidentiality". In Paragraph 23, insert "[and] migrant workers" after "including job applicants" to make it clear that migrant workers are not to be forced to undergo tests before leaving their country of domicile or on arrival in the receiving country. In Paragraph 26, replace the text with: "Members, whether receiving or sending countries, should ensure that migrant workers, or those seeking to migrate for employment, are not excluded from migration on the basis of their HIV status, whether real or perceived". A clearer allocation of responsibilities concerning this matter is desirable.

*United Kingdom.* As concerns Paragraph 25, point 29 from the Conclusions of the Committee on HIV/AIDS was clear that an exemption should be included in the final Recommendation, but that the

Committee could not during its first discussion agree on appropriate wording that would capture the concerns of Committee members. In order to move discussions forward on this Paragraph in time for the next HIV/AIDS Committee, the Office was therefore mandated to propose wording that could accommodate the views of the Committee members. Against this background, we are very concerned that the Office has removed the paragraph and feel that such action will only complicate future discussion. While we very much welcome the information provided on the ILO's obligations to other UN agencies, which is entirely appropriate and should add to the discussions at the next HIV/AIDS Committee in June, it is not, in our view, reasonable grounds to simply exclude the 2009 text. It is clear that the text agreed in the conclusions of the Committee fully supported the aims and principles of UNAIDS relating to mandatory disclosure and mandatory testing and proposes only an exemption for mandatory disclosure which is strictly limited in scope. We feel that this exemption does not, in itself, constitute a violation of the ILO's joint sponsorship as implied by the ILO commentary on point 29, and that the matter should be referred to the Conference Committee for its consideration before any further action is taken. With respect to OHCHR/UNAIDS, the *International Guidelines on HIV/AIDS and Human Rights* include a reference to mandatory testing, although mandatory testing is neither supported nor explicitly prohibited. We feel that discussions on a new standard are both relevant in the context of the evolving landscape of guidance on HIV/AIDS and the ILO's responsibilities as a co-sponsor of UNAIDS, and that the development of a new instrument provides the ILO and its constituents with an opportunity to make its own distinct contribution to the formulation of employment policy at this critical juncture. For these reasons, we do not consider this part of the text to be a satisfactory basis for discussion and ask that the ILO Office fulfil the remit determined by the HIV/AIDS Committee in its 2009 conclusions, and provide the Committee, for its 2010 discussions, with a working formulation which accommodates the legitimate concerns raised by its members, while leaving the principle of mandatory disclosure intact.

#### EMPLOYERS

CNT (Belgium). For Paragraph 26, in order to avoid all ambiguity on the general prohibition of testing and screening for employment purposes, it should be explicitly spelled out that migrant workers should not be subjected to mandatory HIV/AIDS testing in the context of procedures for access to the territory and to employment.

BUSA (South Africa). Better guidance regarding the protection of employees' data is required and the development of guidelines in this respect is paramount.

UPS (Switzerland). Paragraphs 23 to 25 should be made conditional on the requirements of the job or consistent with national practices. Paragraph 26 falls within the remit of member States and not within that of the ILO.

#### WORKERS

CGT-RA (Argentina). We consider it very important to keep Paragraph 26, but suggest changing the second part of the sentence to "should not be required to disclose their HIV-status, real or perceived, for the purpose of migration".

CNT (Belgium). See employers' comments.

ACV-CSC (Belgium), CITUB (Bulgaria), FTUC (Fiji), CGT (France), UGT (Spain), FNV (Netherlands), CATP (Peru), NSZZ (Poland), TCO (Sweden), TUC (United Kingdom), ITUC. Replace the subheading "Privacy and confidentiality" with "Testing, privacy and confidentiality".

FTUC (Fiji), CGT (France), FNV (Netherlands), LO (Norway), UNIO (Norway), YS (Norway), CATP (Peru), NSZZ (Poland), UGT-P (Portugal), UGT (Spain), SFTU (Swaziland), TCO (Sweden), TUC (United Kingdom), ITUC. We note the Office's argument that, from a legal point of view, migrant workers are fully covered by Paragraph 23 of the proposed Recommendation (point 27 of the conclusions). However, as testing migrant workers for HIV/AIDS is currently taking place in many receiving countries, we believe that the coverage of migrant workers should be made explicit. We therefore propose to change the current wording of Paragraph 23 by adding after the words "job applicants" the words "and migrant workers". The phrase would read: "HIV testing or other forms of screening for HIV should not be required of workers, including job applicants and migrant workers".

CGT-RA (Argentina), ACV-CSC (Belgium), FTUC (Fiji), AKAVA (Finland), SAK (Finland), STTK (Finland), CGT (France), LO (Norway), UNIO (Norway), YS (Norway), CATP (Peru), NSZZ (Poland), TCO (Sweden). We strongly support the deletion of the original bracketed text ("except in very

exceptional and specific cases ...”) in Paragraph 25. We strongly oppose mandatory testing or mandatory disclosure, in any circumstances, of confidential medical data relating to HIV/AIDS status. There should be no exceptions to the general prohibition against such compulsory testing and disclosure. We are indeed very concerned that even if one exception were to be permitted for an occupational group, it would open the door to testing for other occupations. The fact that an HIV test is only valid for the precise moment in which it was carried out seems to have been ignored or not clearly stated. Nor is testing a means of guaranteeing risk-free behaviour of a person who has tested negative. The only way to provide protection is through prevention. For occupational exposure this means applying the principles of universal precaution at all times. We also strongly support the current wording of Paragraph 25 according to which treatment of personal data explicitly refers to the ILO code of practice on the protection of workers’ personal data (1997) as well as other relevant international data protection standards. We would recall that securing confidentiality of HIV/AIDS data through appropriate, rights-oriented data treatment practices is an undisputable condition of any successful workplace action on HIV/AIDS. The viral load of a person on treatment is very low, thus bringing down the risk of transmission to low levels as well.

ICTU (Ireland). Ireland should not support mandatory testing as it is contrary to the privacy protection provisions in the Irish Constitution. The WHO requires that HIV testing respect the “3 Cs” (*confidential*, accompanied by *counselling* and be carried out with informed *consent*, meaning both informed and voluntary). The standard should include a clause prohibiting mandatory testing, stand-alone HIV testing programmes that do not provide access to counselling, prevention information or treatment, programmes that are coercive or discriminatory, and programmes that fail to ensure confidentiality. The standard should also require States to have in place dissuasive sanctions and an easily accessible means of redress for workers if their rights are violated.

AKAVA (Finland), SAK (Finland), STTK (Finland). In order to protect both migrant workers and migrant jobseekers against discrimination, these vulnerable groups should be mentioned in both Paragraphs 23 and 26, since the discrimination may originate from either the employer or the State.

GSEE (Greece). The wording should be strengthened in Paragraphs 23 to 26 with respect to the limitations and to the commitment of all persons responsible for data processing who have access to sensitive personal data.

FNV (Netherlands). We strongly support Paragraph 25. However, referral to the ILO code of practice on the protection of workers’ personal data (1997) will unfortunately not be adequate for this Paragraph, since this does not rule out the possibility that countries may still require information on HIV testing (see paragraph 10.1 of the ILO code of practice on the protection of workers’ personal data).

COSATU (South Africa). Paragraph 25 should include a reference to national constitutional rights.

ACV–CSC (Belgium), FTUC (Fiji), CGT (France), FNV (Netherlands), LO (Norway), UNIO (Norway), YS (Norway), CATP (Peru), NSZZ (Poland), UGT (Spain), TCO (Sweden), SFTU (Swaziland), TUC (United Kingdom), ITUC, ITUC–Africa. Paragraph 26 should refer to the responsibility of both sending and receiving States by adding the following text: “Members, whether receiving or sending countries, should ensure that migrant workers, or those seeking to migrate for employment, are not excluded from migration on the basis of their HIV status, whether real or perceived”.

#### OFFICE COMMENTARY

As concerns Paragraph 25, the Office respected the mandate of the Conference by seeking a text that would allow for an exception to the absolute prohibition on mandatory testing, but was unable to find one that was in accordance with international human rights obligations or acceptable to other constituents. The Office consulted both the WHO and UNAIDS in this regard, both of which confirmed that there was no desirable or acceptable exception. In addition, the exception which was adopted was placed in bracketed text, indicating that the Committee did not fully endorse it, and contained no criteria for the posited exception apart from its being limited and being adopted after consultation with employers and workers.

It remains open for the Committee to rediscuss the issue on the basis of amendments that may be offered during the discussion, but the majority of the comments received do not support mandatory testing being allowed under any circumstances. While some governments and some employers support such exceptions in the light of their own law and practice, others in both

groups and all the workers' organizations do not. The Office considers that a Recommendation, which is a promotional document and not by its terms legally binding, should not take a position on the desirability of such exceptions.

A thorough examination of the human rights documentation issued by the Office of the United Nations High Commissioner for Human Rights, the work of the Commission on Human Rights and its successor, the Human Rights Council, and the comments of the United Nations treaty bodies, reveals no exception to the principle of prohibiting mandatory testing and disclosure of HIV/AIDS status.

Point 10.1 of the ILO code of practice on the protection of workers' personal data, 1997, does, as the Government of the Netherlands pointed out, include the following passage:

10.1. Personal data should not be communicated to third parties without the worker's explicit consent unless the communication is:

- (a) necessary to prevent serious and imminent threat to life or health;
- (b) required or authorized by law; ...

It should be noted, however, that the ILO code of practice on HIV/AIDS was adopted four years after the 1997 code, and while it refers to that code in point 4.7, it includes unqualified prohibitions on mandatory testing and disclosure of workers' personal data. This indicates strongly that account was taken of the 1997 code, which was not deemed to provide for any exception to the principles enunciated in the HIV/AIDS code of practice.

References to migrant workers have been included in former Paragraphs 23 and 25 (now Paragraphs 24 and 26), in response to a number of proposals. Paragraph 26 has been amended to include a reference to both countries of origin and countries of destination, in response to comments.

### ***Occupational safety and health (Paragraphs 27 to 31)***

#### GOVERNMENTS

*Austria.* Paragraph 27 should be replaced with the following: "In the working environment the risks to safety and health of all persons should be minimized in order to prevent transmission of HIV in the workplace, taking into account the Occupational Safety and Health Convention (No. 155) and Recommendation (No. 164), 1981", etc.

*Canada.* In this section the use of the word "instrument" when referring to guidance documents should be reconsidered. Paragraph 29 should more accurately reflect what was agreed upon in point 31 of the conclusions adopted by the Conference in 2009, according to which, if there is a real possibility of exposure to HIV at work, "it is necessary to raise awareness in this regard and guarantee that prevention, safety and health measures are taken in accordance with the relevant standards".

*Greece.* In Paragraph 29, replace the words "[are] guaranteed" with "measures are taken".

*New Zealand.* The word "guaranteed" in relation to occupational transmission of HIV in Paragraph 29 should be replaced, since it would otherwise provide for an extremely high standard which may be unattainable.

*South Africa.* In principle, HIV should be addressed jointly with TB where applicable, throughout the text of the Recommendation.

*United States.* The list of specific measures in Paragraph 28 that are widely recognized as effective control measures should be expanded as follows: "Safety and health measures to prevent workers' exposure to HIV, especially in occupations most at risk, should include universal precautions, use of engineering and work practice controls, personal protective equipment when indicated, good housekeeping practices and post-exposure prophylaxis". A clarifying amendment to Paragraph 29 should read: "Workers in

occupations most at risk of exposure to HIV should receive training on routes of transmission and prevention of exposure. Member States should take measures to ensure that prevention, safety and health are guaranteed in accordance with the relevant standards”.

#### EMPLOYERS

CNT (Belgium). In Paragraph 28, insert at the end “such as workers in the health sector”, to spell out that those workers are one of the groups that are faced with occupational risks.

UCCAEP (Costa Rica) and UPS (Switzerland). Should be in accordance with national procedures and policies.

Business NZ (New Zealand). The word “guaranteed” in relation to occupational transmission of HIV in Paragraph 29 is far too high a standard.

EFP (Pakistan). Occupational safety and health should be strengthened and should also include workers’ families.

BUSA (South Africa). Replace “guaranteed” with “implemented” in Paragraph 29.

#### WORKERS

CNT (Belgium). See above.

FTUC (Fiji), AKAVA (Finland), SAK (Finland), STTK (Finland), LO (Norway), UNIO (Norway), YS (Norway), CATP (Peru), NSZZ (Poland), UGT (Spain), TCO (Sweden), TUC (United Kingdom), ITUC, ITUC–Africa. In Paragraph 28, in order to clarify that some occupations are more at risk for occupational transmission, include a reference to the health sector.

FTF (Denmark). It is very important to recognize the special risks of blood-borne infections that are connected with work in the health-care sector and the fact that special attention from the employer is necessary to prevent this risk. In Europe, the workers’ and the employers’ organizations in the health-care sector this summer concluded a framework agreement on the prevention of needle-stick and other injuries from sharp instruments based on the greater risk for people working in the sector. The Commission of the European Union has just decided to give this agreement legal force within the EU, recognizing the increased risk in this particular sector. On this basis, we propose adding the words “such as the health sector” at the end of Paragraph 28.

NZCTU (New Zealand). “Guaranteeing” health and safety in Paragraph 29 is probably an unattainable standard and could be replaced with “protected to the highest possible standard”.

COSATU (South Africa). Paragraph 27 should include a reference to national health and safety instruments (policies, acts or regulations).

#### OFFICE COMMENTARY

A reference to the health-care sector has been included in Paragraph 29 (formerly Paragraph 28), in response to the comments received. Paragraph 29 of the previous draft has been amended to remove the term “guaranteed”, as proposed by several respondents.

#### *Children and young persons (Paragraphs 32 and 33)*

#### GOVERNMENTS

*Greece.* Delete the second sentence of Paragraph 32, since any other requirement than those enumerated in Convention No. 182 goes beyond the world of work.

*Barbados.* Insert a new paragraph after Paragraph 33 to read: “Members should provide measures to address children who are affected as a result of death or illness of a parent or caregiver due to HIV”.

*Switzerland.* Insert in Paragraph 33 a reference to sexual and reproductive health education.

#### EMPLOYERS

UPS (Switzerland). This is already provided for in other ILO instruments and a repetition is not necessary. Sex education in schools does not concern enterprises.

## OFFICE COMMENTARY

The second sentence of former Paragraph 32 has been modified by inserting “these” to clarify that it concerns the children to which the first part of the Paragraph refers. Former Paragraph 33 has been modified to take account of the suggestion by the Government of Switzerland. The proposal for a new Paragraph appears to be taken into account with the insertion of “or caregivers” in former Paragraph 32.

### V. Implementation (Paragraph 34)

#### GOVERNMENTS

*Netherlands.* Paragraph 34(a) should read: “be given effect in consultation with the most representative employers’ and workers’ organizations and other parties concerned, especially organizations of occupational health physicians or occupational health services ...”. Paragraph 34(f) should read: “promote social dialogue, consultation, negotiation and other forms of cooperation among government authorities, public and private employers and workers and their representatives, taking into account the view of occupational health personnel, specialists on HIV/AIDS, organizations representing persons living with HIV and other parties including relevant NGOs, international organizations and country coordinating mechanisms”. NGOs, business coalitions and the Global Fund to Fight AIDS, Tuberculosis and Malaria contribute much with, for example, technical support and condom distribution. They are also located in many countries and can therefore set an example with their workplace policies. In addition, monitoring and evaluation should be further defined.

*Greece.* Insert in Paragraph 34(b) after “involve” the words “where appropriate”, to provide more flexibility if there are no national justice authorities dealing in particular with labour issues. In the same Paragraph, merge subparagraphs (d) and (h); rephrase subparagraph (e) for better understanding to read: “encourage all enterprises, including those operating in export processing zones, to implement, through their supply chains and distribution networks, the national policies and programmes, with the participation of employers’ and workers’ organizations”.

*Japan.* It is unclear how the concrete measures are to be taken. It is therefore necessary to define what is to be understood by “supply chains and distribution networks”, and a clearer explanation should be given on the measures enterprises are expected to take.

#### EMPLOYERS

ANDI (Colombia). Remove the reference to collective agreements in Paragraph 34(a)(ii).

UCCAEP (Costa Rica). Paragraph 34(a) should specify who are the “other parties concerned”.

NK (Japan). Same comment as the Government of Japan.

UPS (Switzerland). Paragraph 34(a) should be in accordance with the national situation; the measures proposed in Paragraph 34(b) are not within the competence of the labour justice system; and those mentioned in Paragraph 34(f) should be the choice of the social partners and not established in national programmes and policies.

#### WORKERS

FNV (Netherlands). Paragraph 34(a) should read: “be given effect in consultation with the most representative employers’ and workers’ organizations and other parties concerned, especially organizations of occupational health physicians or occupational health services ...”. Paragraph 34(f) should read: “promote social dialogue, consultation, negotiation and other forms of cooperation among government authorities, public and private employers and workers and their representatives, taking into account the views of occupational health personnel, specialists in HIV/AIDS, organizations representing persons living with HIV and other parties such as relevant NGOs, international organizations and country coordinating mechanisms”. NGOs, business coalitions and the Global Fund contribute highly with, for example, technical support and condom distribution. They are also located in many countries and can therefore set an example with their workplace policies.

CGT (France). National legislation should provide for measures to be taken for any violation of the rights to privacy and confidentiality. We suggest the following text for Paragraph 34(c): “provide for measures in national legislation to be adopted to deal with breaches of the right to privacy and confidentiality as well as other discriminatory practices in the workplace that are in violation of this Recommendation”.

#### OFFICE COMMENTARY

It was decided in June 2009 that references to collective agreements should be included.

#### *Social dialogue (Paragraphs 35 and 36)*

##### GOVERNMENTS

*Canada.* With regard to Paragraph 36, the text should be consistent throughout: “targeted” groups is not used elsewhere.

*Greece.* Replace Paragraphs 35 and 36 with “Employers’ and workers’ organizations should promote awareness of HIV/AIDS including prevention and non-discrimination through the provision of education and information to their members. These should be gender sensitive and sensitive to all targeted groups”.

*Switzerland.* Insert the following in Paragraph 35 after “with the active”: “and voluntary involvement, respecting the protection of information” (phrase continues with: “at their workplace”).

##### EMPLOYERS

UPS (Switzerland). Delete both Paragraphs, since the roles of the social partners should be decided by them.

#### OFFICE COMMENTARY

The reference to “targeted groups” has been replaced in the new draft text with a reference to sensitivity to gender and cultural concerns. The proposal by Greece would omit any reference to the involvement of persons living with HIV and, given that such a reference was approved by consensus during the Conference discussion in June 2009, removing it did not appear appropriate.

#### *Education, training, information and consultation (Paragraphs 37 to 40)*

##### GOVERNMENTS

*Australia.* Paragraph 39 should be moved to Part IV dealing with occupational safety and health.

*Barbados.* In Paragraphs 38 and 39, insert “and retraining” after the references to “training”.

*Japan.* Paragraph 39 confirms the necessity of workers having knowledge, but in many occupations workers are seldom involved in bleeding accidents; there is little reason to provide them with practical training on infection-control procedures. Replace “training” with “education and training”.

*Switzerland.* Include in Paragraph 38 a reference to the fact that the confidentiality of information should be respected.

*United States.* The second sentence of Paragraph 39 should be clarified to read: “Workers whose occupation puts them at risk of exposure to human blood, blood products and other body fluids should receive additional training in exposure prevention, exposure reporting procedures and post-exposure prophylaxis”.

#### EMPLOYERS

UCCAEP (Costa Rica). Workplace inspections referred to in Paragraph 40 should be the usual ones and not especially established for HIV and AIDS.

BDA (Germany). The provisions on training measures and so on in Paragraph 37 are too far-reaching and only make sense if there is a reference to persons at risk.

NK (Japan). Same comment as the Government of Japan.

CGTP-IN (Portugal). Should also refer to dissemination of information to society at large.

BUSA (South Africa). The words "access to" should precede the word "training" in Paragraph 39.

UPS (Switzerland). Delete Paragraph 40, and Paragraphs 37 to 39 should be interpreted in accordance with national practices.

#### OFFICE COMMENTARY

Paragraph 38 has been reworded and a reference to "persons in vocational training" has been added to reflect the discussions at paragraph 368 of *Provisional Record* No. 15.

#### *Public services (Paragraphs 41 and 42)*

#### EMPLOYERS

SEV (Greece). The reference to state services in Paragraph 41 should be made more specific, particularly in regard to the preventive measures to be taken. The reference to "if necessary" should be deleted, as the role of labour inspectors must be strengthened with appropriate training being provided to them, and they should mainly provide their assistance to small enterprises when there is a lack of access to specialized information and counselling services.

UPS (Switzerland). Delete the reference to the labour justice system in Paragraph 41. Delete Paragraph 42.

#### WORKERS

CGTP-IN (Portugal). Paragraph 42 should also include a call for strengthening health systems at the workplace.

#### OFFICE COMMENTARY

It does not appear appropriate to include a reference to health systems at the workplace in this section, which deals with public services, or to delete the reference to the labour justice system, which is often the national body responsible for implementing many of the principles contained in the proposed Recommendation, particularly anti-discrimination provisions in national legislation. The phrase "if necessary" has been retained, as the proposed Recommendation should not presume that inspection services are necessarily in need of strengthening. The reference to "prevention, treatment, care and support" in Paragraph 43 is set out in inclusive language to avoid limiting the responsibility of public services.

#### *International cooperation (Paragraphs 43 to 45)*

No comments received.

### **VI. Follow-up (Paragraphs 46 to 47)**

#### GOVERNMENTS

*Canada*. These paragraphs should not be modified.

*Barbados, Czech Republic, United States*. Support the use of Section III of Recommendation No. 198 as a basis for drafting this part of the proposed instrument.

*Netherlands.* It is important that the follow-up procedures and monitoring be tripartite. UNAIDS and UNGASS mechanisms are not sufficiently equipped for tripartite evaluation.

*New Zealand.* Suggests that the prescriptive language be amended to read: “Members may wish to consider regular and periodic review ...”, etc.

*Sweden.* Should be amended to include a provision ensuring that associations of employers and employees are represented in the follow-up of the developments to which the Recommendation has given rise, and that they are consulted during the actual monitoring process.

#### EMPLOYERS

CNT (Belgium). It is important to have a follow-up to the Recommendation in order to permit an evaluation of measures taken and to reorient actions if necessary. Likewise, it is important that employers’ and workers’ organizations are involved, and a preference is therefore expressed for article 19 procedures rather than the national reports provided to UNAIDS (the so-called UNGASS reports).

ANDI (Colombia), CGECI (Côte d’Ivoire), NHO (Norway), CONFIEP (Peru), UPS (Switzerland). The procedures provided for in article 19 of the ILO Constitution are the most appropriate means of follow-up.

MEF (Mauritius). We are not in favour of any follow-up, or of modelling this section on Recommendation No. 198.

#### WORKERS

BAK (Austria). More specific details of follow-up measures are needed both in respect of the possible action by the ILO and of the effectiveness of implementation by member States.

CNT (Belgium). See previous comments.

AKAVA, SAK and STTK (Finland). The follow-up mechanism will effectively be implemented through ILO tripartite machinery, and this principle must therefore be clearly put in writing in the Recommendation and discussed by the Conference Committee in 2010. We do not oppose additional follow-up through UNGASS, which must not by any means weaken the tripartite ILO follow-up proceedings.

NZCTU (New Zealand). Emphasizes the importance of regular follow-up and review as a routine and important component of all international human rights standards and also of best practice guidance.

ACV-CSC (Belgium), CITUB (Bulgaria), FTF (Denmark), FTUC (Fiji), CGT (France), LO (Norway), UNIO (Norway), YS (Norway), CATP (Peru), NSZZ (Poland), UGT (Spain), TCO (Sweden), TUC (United Kingdom), ITUC, ITUC-Africa. In the current formulation of Part VI, the missing element is the idea of tripartism, which is the basic principle of the ILO. There is a need to ensure explicitly that employers’ and workers’ organizations are represented in the mechanism for monitoring developments in taking action on the basis of this Recommendation and that they are consulted under the monitoring mechanism. We therefore want the wording of Part VI (Follow-up) to include such provisions. The “Monitoring and Implementation” section of the Employment Relationship Recommendation, 2006 (No. 198), may provide the basis for a more effective and comprehensive text for this section of the proposed Recommendation.

We would also be in favour of the Conference adopting a resolution accompanying this Recommendation and calling on the Governing Body to prepare for the transformation of this Recommendation into a Convention if the evaluation were to show that substantial parts of the population remain excluded from the principles and rights set out in it.

FNV (Netherlands). It is important that, in accordance with Recommendation No. 198, the follow-up and monitoring be tripartite. UNAIDS and UNGASS mechanisms are not sufficiently equipped for tripartite evaluation. As is stated in the Office commentary, monitoring and evaluation will need to be further defined. This is especially important since implementation in many countries is very difficult.

FTUC (Fiji). As concerns the follow-up, we strongly suggest that the wording of the follow-up mechanism of the proposed Recommendation should clearly establish that the monitoring and reporting remains within ILO supervisory machinery to ensure the full involvement of all tripartite partners. At the 98th Session of the Conference, the Committee on HIV/AIDS discussed the reporting obligation under the special session of the General Assembly on HIV/AIDS (UNGASS). UNGASS country progress reports,

currently submitted to UNAIDS, would in theory also include reporting actions taken by ILO member States under the proposed Recommendation. We would stress that UNGASS reports are most often drafted by ministries of health, with the involvement of national AIDS authorities and networks of people living with HIV, but very rarely with the involvement of ministries of labour. In addition, these reports do not provide the opportunity for the participation of employers' and workers' organizations, nor is the involvement of ministries of labour guaranteed. It is therefore a high priority for all of us that a follow-up mechanism for the new ILO HIV/AIDS instrument be established within the ILO to ensure the active involvement of all social partners. In order to provide for effective follow-up, such a mechanism should go beyond the usual reporting procedures for ILO Recommendations.

#### OFFICE COMMENTARY

It should be reiterated that this section concerns follow-up at the national level, which is entirely separate from any follow-up that may be put in place by the ILO in the context of article 19 of the ILO Constitution. A number of respondents have suggested the formulation of an expanded text on follow-up based on Section III of Recommendation No. 198. A draft based on this section is therefore included in the proposed new text. This formulation also incorporates the principle of tripartite participation which a number of respondents indicated that they wished to see reflected expressly in the text of this section.