



## **Fifth item on the agenda: HIV/AIDS and the world of work**

### **Report of the Committee on HIV/AIDS**

1. The Committee on HIV/AIDS and the World of Work held its first sitting on 2 June 2010. It was originally composed of 150 members (73 Government members, 27 Employer members and 50 Worker members). The composition of the Committee was modified eight times during the session and the number of votes attributed to each member adjusted accordingly.<sup>1</sup>

<sup>1</sup> The modifications were as follows:

- (a) 3 June: 178 members (94 Government members entitled to vote with 1,643 votes each, 31 Employer members with 4,982 votes each and 53 Worker members with 2,914 votes each);
- (b) 4 June: 180 members (96 Government members entitled to vote with 13 votes each, 32 Employer members with 39 votes each and 52 Worker members with 24 votes each);
- (c) 5 June: 172 members (99 Government members entitled to vote with 40 votes each, 33 Employer members with 120 votes each and 40 Worker members with 99 votes each);
- (d) 7 June evening: 162 members (100 Government members entitled to vote with 117 votes each, 26 Employer members with 450 votes each and 36 Worker members with 325 votes each);
- (e) 8 June: 166 members (102 Government members entitled to vote with 247 votes each, 26 Employer members with 969 votes each and 38 Worker members with 663 votes each);
- (f) 9 June: 161 members (102 Government members entitled to vote with 144 votes each, 27 Employer members with 544 votes each and 32 Worker members with 459 votes each);
- (g) 10 June: 160 members (103 Government members entitled to vote with 270 votes each, 27 Employer members with 1,030 votes each and 30 Worker members with 927 votes each);
- (h) 14 June: 154 members (103 Government members entitled to vote with 650 votes each, 26 Employer members with 2,575 votes each and 25 Worker members with 2,678 votes each).

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2. The Committee elected its Officers as follows:

- Chairperson:* Ms T. Nene-Shezi (Government member, South Africa) at its first sitting
- Vice-Chairpersons:* Mr P. Obath (Employer member, Kenya) and Mr J. Sithole (Worker member, Swaziland) at its first sitting
- Reporter:* Ms P. Mooney (Government member, Australia), assisted by Mr Y.K. Yeboué (Government member, Côte d'Ivoire), at its 12th sitting.

3. At its tenth sitting, the Committee appointed a Drafting Committee composed of the following members: Mr M. Boisnel (Government member, France) and Mr E. Consiglio (Government member, Argentina); Mr K. Coon (Employer member, Canada) and Ms S. Stepanoff (Employer member, France); Ms E. Lynch (Worker member, Ireland) and Mr H. Fonck (Worker member, Belgium); and the Reporter, Ms P. Mooney (Government member, Australia) (ex officio).
4. The Committee had before it Reports V(2A) and V(2B), entitled *HIV/AIDS and the world of work*, prepared by the Office under item V of the agenda of the International Labour Conference: "Elaboration of an autonomous Recommendation on HIV/AIDS in the world of work – *Standard setting, second discussion*".
5. The Committee held 19 sittings.

## Introduction

6. The Executive Director of the Social Protection Sector, Mr Assane Diop, opened the meeting. After years fighting for and supporting the cause of people living with HIV/AIDS, and in particular advocating their right to medical care and to be protected against discrimination, he felt particularly honoured to be present at the opening of the Committee's session. As a private citizen, a trade unionist and later as Minister of Health in Senegal, he had devoted much time and energy to the fight against discrimination and prejudice in the health sector, and he hoped the new instrument would serve as an important tool for the advancement of that cause.
7. The Chairperson called on all participants to play a proactive and productive role in the Committee's work, in order to ensure that the instrument to be adopted by the Committee at the end of the present session would reflect a spirit of consensus. She thanked the Office for having prepared the reports that would serve as a background for the Committee's work. The Committee's first session in 2009 had helped to produce a solid road map for the discussions during the present session. The Committee must find consensus and work together to craft the Recommendation, which would serve as a powerful and effective means to address the disease that was affecting millions of people worldwide.
8. The representative of the Secretary-General, Dr Sophia Kisting, Director of the ILO Programme on HIV/AIDS in the World of Work, stated that the proposed Recommendation had the potential to serve as a valuable tool for an accelerated HIV response through the world of work in pursuit of the Millennium Development Goals (particularly MDG 6) and the achievement of universal access to HIV prevention, treatment and care and support. Stigma and discrimination continued to be major barriers to effective HIV programming, including the lack of uptake of services such as voluntary counselling and testing (VCT) and prevention of mother-to-child transmission (PMTCT).

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They also caused workers to either lose their jobs or to be excluded from the job market entirely. The protection of human rights in the world of work remains of paramount importance.

9. The draft instrument was in line with the ten priority areas of UNAIDS and highlighted the unique potential of tripartite partners to deliver effective prevention to broad segments of the population. It was also a human rights instrument with the potential of protecting the rights to education and information, confidentiality and equal access to social protection, and job security.
10. There were four challenges amongst others that would need to be addressed in the second discussion. First, in consultation with UNAIDS and the World Health Organization (WHO), the Office had developed definitions of HIV and AIDS that were succinct but also medically correct, and that would not have to be amended regularly. Second, the Office had made an attempt to find a formula to reflect the language adopted last year and placed in brackets on mandatory disclosure of HIV/AIDS status for certain occupations, but in light of international human rights standards and its obligations as a co-sponsor of UNAIDS it had been unable to do so; the issue was therefore referred back to the Committee. Third, the Office proposed removing the reference to the Termination of Employment Convention, 1982 (No. 158), since a decision from the Governing Body on the status of that instrument was still pending (see paragraph 306 below). The Committee should find alternative wording to ensure non-discrimination in the context of termination of employment. Finally, the proposed Recommendation referred only to follow-up and review at the national level and did not contain provisions on follow-up at the international level.

## General discussion

11. The Employer Vice-Chairperson stated that the proposed Recommendation would provide a good basis for discussion but that there was still a lot of work to be done. The ILO code of practice on *HIV/AIDS and the world of work* (the ILO code of practice) was a milestone document, developed through strong consensus of governments, employers and workers. The new Recommendation should not use prescriptive language, as this would make it difficult to adapt to variable and changing circumstances. It was important to include language such as “where applicable” and “where possible” to ensure the instrument would remain relevant to countries in different situations.
12. The Recommendation was only part of the response and would not replace, but rather complement, the health-care services. It was important to find a balance between what could be achieved in the workplace, such as prevention education, and the work of governments and the health-care services. Micro-, small- and medium-sized enterprises could not be sustained if they took on too much financial burden addressing HIV/AIDS.
13. It was necessary to find a balance between giving HIV/AIDS special status and addressing the issue in similar ways to other life-threatening diseases or chronic illnesses in order to avoid further stigmatizing the disease. The ILO code of practice clearly prohibited mandatory testing for employment purposes but there was a clear need to promote VCT in the workplace, particularly in the health-care sector. The Committee would have to take into account international guidelines on universal precautions such as the joint ILO/WHO guidelines on the health-care sector. Important challenges on mandatory testing remained, such as with migrant workers, but the overall position of the employers was that the most important criterion is the fitness of workers and their ability to perform the tasks assigned to them.

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14. The Worker Vice-Chairperson noted that as a result of the meaningful dialogue in the first discussion, Committee members had a better understanding of the issues and of each other and greater ownership of the draft instrument. In the meantime, the pandemic had continued to grow, with 2.7 million new infections and 2 million deaths in 2008 alone, with sub-Saharan Africa accounting for 70 per cent of these deaths. Extraordinary interventions were required. HIV did not discriminate amongst victims and affected the entire human race. An HIV-positive worker had the right to work as long as medically fit.
  15. The Workers' group had reluctantly shifted its support from a Convention to an autonomous Recommendation but, as indicated in 2009, would want to have a stronger document than the ILO code of practice and a more regular follow-up and reporting mechanism. They intended to submit a resolution to this effect to the Conference. The concessions made by the Workers' group were intended to promote an instrument that would guide member States in the formulation of national laws and policies. Budgetary allocations to public health would be one indication of national commitment; while at the international level commitment would be evidenced by sustained resource support even during the emergence of other crises. He called on the G8 and other groups to meet their commitments to universal access and to MDG 6.
  16. The instrument adopted should be one that covers all citizens; respects privacy and confidentiality without any compromise; encourages voluntary testing; supports persons living with HIV; protects all vulnerable groups; and captures the pillars of decent work with a special focus on social dialogue. The impact of poverty on the epidemic was an issue of concern and the Worker Vice-Chairperson suggested that national policies should review disposable incomes and food security, and that nutrition should be an important component of treatment.
  17. The Government member of Spain, speaking on behalf of the European Union (EU) <sup>2</sup> Member States Government members of the Committee, as well as Albania, Bosnia and Herzegovina, Croatia, Montenegro, Serbia, The former Yugoslav Republic of Macedonia and Turkey, expressed generally positive support for the draft instrument and for dialogue and cooperation in the Committee. The global scope of the pandemic and the economic development of the world and of Europe necessitated coordinated action at all levels, including in the world of work. The scope of coverage stated in the draft would require joint and coordinated action among relevant structures. There was acceptance among the EU countries of the general principles in the draft. The workplace had an important role in the provision of information and training related to HIV. Prevention, treatment, care and support services were all equally important. Particular attention should be paid to sexual and reproductive rights and the gender dimension. There was a role for public administration in establishing appropriate policy and practice on occupational safety and health. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) provided a positive framework for action. Emphasis should be placed on international cooperation in addressing the challenges in the world of work.

<sup>2</sup> Austria, Belgium, Cyprus (from 3 June), Czech Republic (from 3 June), Denmark, Finland, France, Germany, Greece (from 3 June), Hungary, Ireland (from 4 June), Italy (from 3 June), Luxembourg (from 3 June), Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

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- 18.** The Government member of France, speaking on behalf of the Government members of the industrialized market economy countries (IMEC),<sup>3</sup> stated that the work accomplished during the first discussion last year provided a sound basis for the second discussion and it was necessary not to re-open discussions on issues where consensus had been reached last year in order to give the Committee ample time to focus on refining the text and ensuring that the principles of the Recommendation were clear, well understood and widely applicable. The IMEC group Government members of the Committee also expressed its commitment to a final document which supported a strong and collective commitment to combating HIV/AIDS.
  - 19.** The Government member of Norway expressed the commitment of her Government to tackling HIV/AIDS, acknowledging that stigma, discrimination and gender inequality were important drivers of the epidemic. She welcomed the special focus of the instrument on women and highlighted the contribution of the ILO code of practice and the social partners to HIV/AIDS programmes and the opportunities the new instrument provided to strengthen social dialogue and tripartism. The scope of the draft instrument was wide and covered other aspects of health policy which, in principle, her Government considered outside the mandate of the ILO. Nonetheless, coordination and cooperation between health-care policies and workplace policies were of high value. In her country, the National HIV strategy (2009–14) addressed several policy areas, including working life, and therefore did not make it necessary for Norway to develop a separate HIV/AIDS policy for the workplace. While it was important to ensure a solid framework for protection of vulnerable groups of workers against discrimination, it was not usual in her country to provide protection for specific groups of workers since their rights were covered in national labour legislation. Norway would nonetheless support an instrument that scaled up the response to HIV/AIDS and addressed health-related insecurities at work, even if Norway would have to adapt it to suit its particular context.
  - 20.** The Government member of Namibia expressed support for the draft instrument. AIDS claimed 15,000 lives annually in his country. His Government had developed a National Code on HIV/AIDS and Employment which protected against discrimination in employment, and dealt with the disease like any other life-threatening condition at the workplace in order to encourage affected employees to remain productive as long as possible. The Namibian Government had rolled out antiretroviral drugs to all health districts, and had hosted the United States President’s Emergency Plan for AIDS Relief (PEPFAR) Implementers meeting in 2009.
  - 21.** The Government member of Canada underlined the importance of the draft Recommendation for the achievement of MDG 6. The dedicated work of the Committee last year had led to a text which did not require substantial changes except for strengthening the text in some areas. She highlighted the need for the Recommendation to reflect the continuum of access to care, treatment and support required by people living with HIV between periods of employment and during unemployment, due to the episodic nature of the condition.
  - 22.** The Government member of the United Republic of Tanzania expressed appreciation to the Office for having prepared a useful draft Recommendation, and for having taken into account input from the ILO constituents. She detailed her Government’s efforts to respond

<sup>3</sup> Australia, Austria, Belgium, Canada, Cyprus (from 3 June), Czech Republic (from 3 June), Denmark, Finland, France, Germany, Greece (from 3 June), Hungary, Ireland (from 4 June), Italy (from 3 June), Japan, Republic of Korea (from 7 June), Luxembourg (from 3 June), Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States.

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to HIV/AIDS, including: the translation of the ILO code of practice into Swahili; mainstreaming HIV/AIDS into labour inspection; developing the Second National Multisectoral Strategy on HIV/AIDS and the Zanzibar National Multisectoral Strategic Plan, the establishment of the Zanzibar AIDS Control Unit, the Zanzibar AIDS Commission and the Tanzania National Commission for AIDS. She also referred to the United Republic of Tanzania's focus on prevention (including for women, youth and vulnerable groups and workers).

23. The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC)<sup>4</sup> Government members of the Committee, stated the importance that GRULAC attached to HIV/AIDS and the world of work. She recalled that, in 2007, a number of GRULAC countries had asked for the topic to be included in the Conference agenda in 2009. She expressed GRULAC's belief that, although an autonomous Recommendation would not be binding, it would serve to orient, strengthen and improve policies and practices.
24. The Government member of Brazil declared his country's support for addressing the issue of HIV/AIDS and the world of work. While efforts on HIV/AIDS to date had been insufficient, they had saved millions of lives, and stigma against people living with HIV would have been even worse without those efforts. He welcomed the reference by the representative of the Secretary-General to recent legislation in Brazil that prohibited mandatory HIV testing and noted that this legislation had been inspired by the current discussion. He expressed concern regarding the relationship between social inequality and poverty and the AIDS pandemic and underlined the need to strengthen mechanisms of international cooperation.
25. The Government member of India welcomed the proposed draft of the Recommendation. He detailed the negative effects of HIV in high-prevalence countries, including reduced productivity and increased labour costs. The loss of employment and livelihood was a direct result of stigma and discrimination, and women and workers in the informal economy were particularly vulnerable. India had ratified Convention No. 111 and the Ministry of Labour and Employment had developed a National Policy on HIV/AIDS and the World of Work, launched in October 2009. The key strategies for implementing the national policy included education and training, vulnerability studies and risk assessment and a widening of the social security net. A high-level steering committee at the national level ensured effective implementation of the national policy. There were an estimated 2.27 million people living with HIV in India, and the virus was spreading from high-risk groups to the general population. In response, the goal of the third phase of the National AIDS Control Programme was to halt and reverse the epidemic through provision of complete and consistent information and ensuring that people living with HIV had access to quality health services. The Government had made inroads in the fight against HIV/AIDS, including training workers and disseminating information to students in industrial training institutes. Hospitals were reaching out to workers in both the informal and formal economies. The Ministry also chaired the "ILO Project on Prevention of HIV/AIDS in the World of Work – A Tripartite Response", which included enterprises and employers' and workers' organizations. In addition, central trade unions and employers' organizations had issued statements of commitment on HIV/AIDS and had carried out work in the field. He supported the adoption of a Recommendation on HIV/AIDS and the world of work.

<sup>4</sup> Argentina, Brazil, Chile, Colombia, Costa Rica, Dominican Republic (from 3 June), El Salvador (from 3 June), Honduras, Jamaica (from 5 June), Mexico, Nicaragua, Panama, Paraguay (from 5 June), Suriname, Uruguay and the Bolivarian Republic of Venezuela.

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- 26.** The Government member of Kuwait said that in her country people living with HIV had the same rights as the rest of the population. If people living with HIV were unable to work, the Government provided support. HIV prevalence was low in Kuwait; nevertheless, Act No. 62 of 1992 on AIDS prevention protected the rights of people living with HIV and fought the stigma and discrimination related to HIV/AIDS. The Government had set up a number of national authorities to deal with issues related to HIV/AIDS and to ensure relevant education and awareness. National instruments were in place and free HIV treatment was available to all. Men and women were treated equally when it came to treatment and education. The Government worked together with non-governmental organizations (NGOs) and educational organizations to raise awareness among the general public. Kuwait had submitted its report under the United Nations General Assembly Special Session (UNGASS) Declaration of Commitment on HIV/AIDS to UNAIDS and was working with UNESCO and the WHO on various programmes related to HIV. Voluntary counselling and testing was available. Although no centres for this yet existed, they were planned for the near future.
- 27.** The Government member of Chad said that the fight against HIV/AIDS in the workplace was important and had been discussed in tripartite consultations at the Ministry of Labour, which had undertaken various activities to combat HIV/AIDS together with HIV/AIDS associations. A workshop had been organized for directors and managers from the public sector and private enterprises, and a study had been conducted with assistance from UNAIDS in three regions of the country: Moundou, N'Djamena and Bol. Regarding care, the Government of Chad had provided free of charge antiretroviral therapy to those living with AIDS. Furthermore, the issue of the fight against HIV/AIDS in the workplace should also be extended to the informal economy.
- 28.** The Government member of the United States said that its national HIV/AIDS policy and strategy were being re-examined and travel restrictions based on HIV status had been lifted. The new strategy had been developed through community meetings and online forums, in which people from all parts of the country had expressed their views. The main points raised at the meetings were that awareness of HIV/AIDS should be brought back to the forefront of people's minds; comprehensive HIV prevention and education, especially for high-risk groups, should be improved; stigma and discrimination should be eliminated; and HIV prevention and treatment activities should be better coordinated. A special campaign was set up called "Act Against AIDS", aimed at individuals, communities and nations. It urged individuals to act responsibly, seek medical attention where necessary and protect themselves and others from HIV. It encouraged communities to mobilize in order to overcome the challenges related to HIV; fight ignorance and complacency; increase awareness about the severity of the epidemic; ensure that HIV prevention services, testing, medical care and treatment were available to those who needed them; work to fight stigma and discrimination; and increase support for people living with HIV. Nations were urged to recognize the continued epidemic, implement the most effective programmes, ensure access to the most effective prevention interventions and intensify efforts to stop the epidemic. The strategy and campaign were in line with the proposed Recommendation, which was historic. The United States expressed its support for the Recommendation.
- 29.** The Government member of Australia agreed with the statement made by the IMEC group Government members of the Committee. The adoption of a Recommendation consistent with the outcomes of the first discussion was strongly supported. The first discussion of the draft had been thorough and therefore only a few issues remained for discussion. The Recommendation was sufficiently detailed to establish a framework for action on HIV/AIDS in the world of work. The focus should primarily be placed on ensuring that the draft text established an effective model strategic framework for promoting and implementing the ILO code of practice on HIV/AIDS and the world of work. The

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international standard would positively influence domestic policy in varying national contexts and meet the very different challenges facing nations.

- 30.** The Government member of Algeria said that in 2009 there had been consensus on the importance of mobilizing the international community and combating the HIV/AIDS pandemic in order to reduce drastically the economic, social and human cost. She recalled that Government, Employer and Worker members agreed that it was crucial to adopt a Recommendation, even if it was not binding. Algeria had been working in close cooperation with UNAIDS on measures to contain the epidemic despite the low prevalence of HIV (0.1 per cent). The Government had worked together with associations and focused its activities on PMTCT, and awareness raising among young people in schools and universities. Multi-sectoral national mechanisms were also in place. There were centres for testing, which was anonymous and free. A national agency was set up to deal with blood safety and the mandatory monitoring of blood donations. Antiretroviral drugs and treatment were free of charge to all who needed them and eight functioning reference centres providing care for the HIV positive, and persons living with AIDS had been set up to that end. The national strategy had four main pillars: prevention among high-risk groups, care for people living with HIV, mobilizing the community and increasing epidemiological data.
- 31.** The Government member of the Islamic Republic of Iran noted that it was important to have the will to stop the spread of the pandemic. Toward this end, his country had adopted a national programme in accordance with WHO protocols and the ILO code of practice. Under this programme, highly trained medical staff were regularly deployed to remote villages to undertake VCT so as to ensure that HIV-positive persons received treatment in centres, located mainly in the larger cities. People living with HIV had access to free health care, treatment, health insurance and medicine. HIV programmes were extended to potentially vulnerable groups, including high schools, prisons and laboratories. The fact that HIV was not a major problem in his country was due to the strict adherence to moral and family values deeply rooted in the teachings of Islam. Pertinent international instruments, including the proposed Recommendation, should pay more attention to this factor.
- 32.** The Government member of China viewed the draft document as a solid foundation for the Committee's discussion. She supported the development of a Recommendation but pointed out that consideration should be given to the different national conditions and the capacity – especially of developing countries – to implement its provisions. She suggested that the ILO should play a more proactive role.
- 33.** The Government member of Turkey pointed out that his was a low prevalence country with 3,671 identified cases and about 300 new cases annually. His Government was committed to strengthening its HIV response efforts. A coding system had been established since 1994 to maintain patients' anonymity in the HIV reporting system; the Ministry of Health provided both preventive and treatment services; and persons living with HIV had equal rights under the legal system. The National AIDS Commission (NAC), in operation since 1996, was multi-sectoral in composition. The implementation of the national programme was monitored by a technical committee of the NAC, under the guidance of the Ministry of Health. Another multi-sectoral mechanism, the Country Coordination Mechanism (CCM), had been established in 2003 under the NAC to oversee the implementation of Turkey's HIV/AIDS Prevention and Support Programme, funded by The Global Fund to Fight AIDS, Tuberculosis and Malaria. That programme targeted both general and vulnerable populations. Additionally, 14 VCT centres had been established; police officers had been trained so as to support outreach activities; and outreach workers from NGOs and public institutions had been trained to improve their work with vulnerable groups. A project to strengthen surveillance of HIV and sexually-transmitted infections,



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funded by the European Commission, had been carried out in five cities. Turkey supported the adoption of a Recommendation.

- 34.** The Government member of Argentina associated his country with the GRULAC group Government members of the Committee's recognition of the Committee's work during the first discussion, the outcome of which was contained in the draft Recommendation. It was an historic moment for the Committee and he was certain that the Recommendation would prove to be very useful in improving the response to the pandemic.
- 35.** The Government member of the Bolivarian Republic of Venezuela stated that the issue of HIV/AIDS in the context of the global financial and economic crisis had made conditions for workers more challenging, and her Government was committed to improving the welfare and quality of life of workers in the Bolivarian Republic of Venezuela. For this reason, the Government, through the Ministry of Health, had guaranteed universal access to free antiretroviral therapy for people living with HIV including persons with opportunistic infections and those who required nutritional support. All 24 states in the Bolivarian Republic of Venezuela had establishments with doctors with expertise in infectious diseases and immunological tests. In conjunction with the National AIDS and STI Programme, new specialized laboratories had been set up. The armed forces in the Bolivarian Republic of Venezuela also had their own treatment and diagnosis programmes and there was compulsory education for students and enlisted troops in sexual and reproductive health with an emphasis on HIV prevention. Workplace HIV/AIDS prevention programmes established by the Ministries of Labour and Health also covered hepatitis B and C and the behaviour of health workers vis-à-vis exposure to bodily fluids. A total of 187 labour inspectors, 223 health and safety supervisors and 90 professionals in occupational health had been trained to support compliance with safety standards. A total of 120,610 prevention delegates had also been trained. The fight against discrimination in the Bolivarian Republic of Venezuela was enshrined in its Constitution and workers had access to a free telephone number which they could use to report any discrimination-related issues for follow-up.
- 36.** The Government member of the Dominican Republic stated that the workplace was a fundamental pillar in the response to HIV/AIDS in her country. The Ministry of Labour, the Presidential Council on AIDS (COPRESIDA) and the social partners carried out a review of the legal provisions in the proposed text. The text reflected the high quality work done during the first discussion last year. She argued that the main aim was to increase awareness, eliminate discrimination and protect the rights of workers affected by HIV/AIDS, and stressed the need to align the implementation of the Recommendation with the targets of MDG 6. In conclusion, she mentioned a draft bill on HIV for the Dominican Republic was being discussed in the Senate and the Chamber of Deputies. The draft bill would strengthen HIV and AIDS-related issues at work, provided for in the AIDS Act No. 55-93, and once promulgated, would repeal the national legislation governing this subject. She urged the Committee to adopt the text, and to ensure that all medical advances and aspects related to human rights, gender equality and diversity were included.
- 37.** The Government member of Uganda, speaking on behalf of the Africa group<sup>5</sup> Government members of the Committee, expressed appreciation for the comprehensive nature of the proposed Recommendation. Africa was more affected by HIV/AIDS than any other region: an estimated 24 million people were currently living with HIV/AIDS in Africa, two-thirds of whom lived in sub-Saharan Africa. In 2008, 1.4 million people had died of AIDS-

<sup>5</sup> Botswana, Côte d'Ivoire (from 5 June), Ghana (from 3 June), Malawi, Mozambique, Namibia, Nigeria, South Africa, the United Republic of Tanzania, Uganda and Zimbabwe.

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related illnesses in sub-Saharan Africa and 1.9 million had become infected with the virus. Over 14 million children had lost one or both parents to AIDS since the beginning of the epidemic. HIV/AIDS had caused immense human suffering, causing illness and death that had affected workplaces and slowed economic activity and social progress. Governments, employers and workers alike must all participate in the search for remedies to the problems related to HIV/AIDS. The Government of Uganda had been championing the fight against HIV/AIDS since the early 1990s, demonstrating that political commitment and public education could be effective instruments for dealing with the virus. As a result of its efforts, Uganda had witnessed a downward trend in HIV prevalence at the national level from 18 per cent in the early 1990s to 5 per cent in 2010. His delegation encouraged all other countries to put political commitment at the forefront of their efforts in respect of HIV/AIDS. The Africa group remained concerned that some of the principles being proposed in the draft were not being recognized globally, in particular those concerning the compulsory testing of migrant workers in some countries. Ugandans searching for work outside the country were often subject to such mandatory testing, which was of particular concern to his Government.

- 38.** The Government member of Ghana stated that the Recommendation should address the need to integrate other infectious and chronic diseases, particularly tuberculosis (TB), into workplace HIV programmes. Prevention needed to be scaled up and must provide for direct access to services for VCT and treatment. The Recommendation should also clarify the issue of compulsory disclosure.
- 39.** The Deputy Executive Director of UNAIDS, Ms Jan Beagle, expressed appreciation for the ILO's unique contribution to the global AIDS response, which included the protection of the rights of workers with HIV, delivering prevention through workplace programmes and ensuring uptake of services for voluntary HIV testing and treatment. Despite successes in reducing new infections globally by 17 per cent since 2001 and providing treatment to 4 million people by 2009, new infections continued to grow. Prevention services had reached only a fraction of those in need, and there had been an average of 7,400 new infections daily over the past year.
- 40.** The Recommendation would be the first global human rights instrument to focus on HIV in the world of work and the draft contained numerous strategic points including: targeted action for vulnerable groups, integration into Decent Work Country Programmes (DWCPs), achieving MDGs, and ensuring representation of world of work responses within national strategies and action plans. It was also in line with several of UNAIDS' ten priority areas, namely, scaled up prevention, reduced stigma and discrimination, integration of TB into HIV/AIDS programmes, removal of punitive laws and increasing access to treatment.
- 41.** The Director of the WHO Department of Public Health and Environment, Dr Maria Neira, said that the long-standing commitment of the ILO to deliver prevention and care through partnerships in the world of work was commendable. The economic crisis had created a challenge to delivering treatment at a time when the WHO had recommended earlier treatment of the virus for those infected. Prevention remained a primary challenge, and new prevention tools were needed to reduce sexual transmission as well as to eliminate mother-to-child transmission. To strengthen HIV responses, the Recommendation should strengthen implementation of the ten principles of the ILO code of practice. The implementation of the standard would protect human rights, support scaling up prevention, reduce stigma and discrimination and protect jobs. The recognition of potential HIV and TB exposure for health-care workers and the need for ensuring their occupational health and safety was highly commendable.

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42. The Government member of Nigeria expressed full support for the Recommendation because it would contribute significantly to prevention, protection of employment rights of people living with HIV and access to HIV treatment. The inclusion of job seekers and the emphasis on at-risk populations was appreciated. The Recommendation should nonetheless recognize the linkage between vulnerability to HIV/AIDS and poverty.
  43. The Government member of Mozambique, speaking on behalf of the Government members of the Southern African Development Community (SADC), emphasized full support for the position of the Africa group on the draft Recommendation. SADC had undertaken a number of initiatives on HIV, and in 2003, SADC members had made a commitment through the Maseru Declaration to respond to the AIDS epidemic using a multi-sectoral approach. SADC had then developed national and sector-specific HIV/AIDS workplace policies and implementation plans. HIV/AIDS was incorporated into a draft regional safety, health and environment (SHE) policy. A regional monitoring and evaluation framework had also been developed.
  44. The Government member of Lebanon underlined the importance of the proposed Recommendation for reducing discrimination, noting that 1,000 people were estimated to be infected with HIV in his country. HIV testing was important for the Ministry of Labour because many of the foreign workers in Lebanon were domestic workers and could potentially transmit the virus in the households where they worked. Prevention should be strengthened by raising incomes, decreasing poverty and creating jobs.
  45. The Government member of Iraq said the Recommendation would serve as a useful tool, and that despite low prevalence of HIV in Iraq, the Government – along with international organizations and NGOs – had taken steps to prevent new infections. The goals of the national AIDS programme in Iraq included both prevention and economic and social support for those infected with the virus.
  46. The Government member of the Philippines described the Recommendation as an important and historical document. The Philippines had experienced a significant increase in the number of HIV/AIDS cases in 2009, particularly among young urban professionals. A number of instruments had been developed in his country that were in line with the Recommendation, including the 1998 AIDS Prevention and Control Act (Republic Act No. 8509) and implementing guidelines adopted through a tripartite process. The Philippine Civil Service Commission had also released a guidance document on the implementation of HIV/AIDS policies and programmes in the public sector. Prevention programmes were also in place for migrant workers during pre-departure training. The Recommendation should highlight the role of workers living with HIV and AIDS in prevention and care programmes.
  47. The Government member of Côte d'Ivoire noted that his country had reduced HIV prevalence from 14 per cent in the mid-1980s to 4.7 per cent in 2005, but that despite this success, the role of the world of work in the national AIDS response needed to be increased. The proposed Recommendation would assist with this effort.
  48. The Government member of Japan expressed alignment with the IMEC statement and emphasized support for the draft. It was important to begin to consider how the Recommendation would be implemented. Japan had taken steps to implement the ILO code of practice on HIV/AIDS including the development of guidelines, prohibition of compulsory HIV testing for employment purposes, confidentiality of medical information and employment discrimination. Labour inspectors had also been trained to introduce and enforce the implementation of these guidelines.

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49. The Government member of Zambia voiced agreement with the statements of SADC members and expressed support for the Recommendation. It would assist in achieving Zambia's national AIDS programme goal of a zero infection rate by 2030.
  50. The Government member of France supported the comments of the IMEC group and EU Member States Government members of the Committee and expressed resolute support for the Recommendation. France had played a key role in the global HIV/AIDS response and had developed its first code of practice to protect the workers in the world of work 23 years ago. The Committee should ensure legal rigour and use its time effectively and avoid reopening discussions on issues where consensus had been reached during the first round of discussions.
  51. The Employer Vice-Chairperson said that the draft Recommendation was a good basis for moving forward, and that the Committee's present task was to refine it. Most of the presentations made during the debate had supported the idea of adopting an international standard. The ILO code of practice had been recognized as a milestone document that had been widely implemented voluntarily by employers without any external requirements or prescriptions.
  52. The new instrument must allow for innovation and be adaptable to country situations and emerging trends. Attention must be paid to the informal economy, since the negative effects of HIV in that sector were increasing, particularly in Africa. The efforts within the informal economy must avoid placing financial constraints on small-scale and informal enterprises.
  53. The emphasis on prevention, treatment, care and support was commendable. While the Recommendation clearly noted the responsibilities of enterprises, individual workers were also responsible for contributing to effective programmes in the world of work. HIV/AIDS must also be addressed through integrated programmes in the workplace that included other infectious diseases, such as TB, in order to avoid stigmatization.
  54. The Worker Vice-Chairperson said that the statements made by Government members had given hope and assurance and had demonstrated member States' willingness to engage objectively in the work of the Committee. There had been general agreement that the draft would provide a good basis for the work of the Committee, although some areas, such as the reference to universal access to testing and the links between HIV and poverty, among others, should be strengthened. The Governments that had participated in the debate represented every region of the world, and the example of Uganda had shown that it was possible to reverse the prevalence of HIV through political will, rather than rhetoric. The instrument, when adopted, would be autonomous, and must serve as a road map for all parties concerned. It must be flexible, in order to guide national policies and laws. It should speak to all nations, and should be applicable through whatever tools each nation had at its disposal. The debate had illustrated that all parties present in the Committee were willing to continue to improve the quality of the draft, with a view to improving the lives of all workers. The adoption of the new instrument was a opportunity to make history.

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## **Consideration of the proposed Recommendation on HIV/AIDS and the world of work**

### **Preamble**

#### ***Third preambular paragraph***

55. The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, introduced an amendment to replace the phrase “HIV/AIDS” with the words “HIV and AIDS” since the two terms were not interchangeable, and the proposed new phrasing was in line with UNAIDS’ standard terminology. The change should be made throughout the document.
56. The representative of the Secretary-General stated that it was a useful amendment but noted that the phrase “HIV and AIDS” was generally appropriate, but on occasions, it was also appropriate to use the terms “HIV” and “AIDS” in isolation, depending on the discussion at hand. The decision on how and when to use the terms should be left to the Committee Drafting Committee.
57. The Employer and Worker Vice-Chairpersons agreed with the amendment as further qualified by the Office. The Government members of the Dominican Republic, France, Kuwait, United States, and Spain, on behalf of the EU Member States Government members of the Committee, also supported the amendment.
58. The amendment was adopted with the understanding that the Committee Drafting Committee would determine the manner of usage in the text.

#### ***Proposed new preambular paragraphs after the fourth preambular paragraph***

59. The Worker Vice-Chairperson introduced an amendment to insert a new phrase after the fourth paragraph: “Considering that poverty reduces access to prevention, treatment, care and support, and therefore increases the risk of HIV transmission, and”. The proposed phrasing would emphasize the impact of poverty on access to prevention and care services and on the possibility of increasing HIV transmission.
60. The Employer Vice-Chairperson responded by reminding the Committee that this issue had been reviewed during the first round of discussions, and it was determined that there was no scientific proof of the relationship between poverty and HIV vulnerability, so this assumed linkage should not be included in the text.
61. The Worker Vice-Chairperson argued that despite a lack of statistical evidence, it was clear at the country level that poor people were not benefiting from HIV prevention, testing and treatment services. It was also clear that poorer regions of the world were experiencing a greater impact of the HIV virus compared with wealthier regions.
62. The Employer Vice-Chairperson drew the attention of the Committee to sections of Report V(2A), page 9, which stated “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.” He

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emphasized that based on this explanation from the Office, the Employers' group did not support the amendment.

- 63.** The Government member of Kuwait introduced a subamendment to introduce the word “might” between the words “poverty” and “reduces”. This would eliminate the need to provide evidence for the linkage between poverty and HIV transmission. The Chairperson of the Committee asked that this suggestion be put on hold pending further discussion of the amendment.
- 64.** The Government member of France, speaking on behalf of the IMEC group Government members of the Committee, supported the proposed amendment noting that there was a clear linkage between poverty and the burden of HIV in developing countries.
- 65.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, supported the general content of the amendment put forward by the Workers' group but noted that it had also proposed an amendment that linked both poverty and unemployment to reduced access to prevention, treatment and care and support.
- 66.** The Worker Vice-Chairperson agreed to withdraw the amendment based on an understanding that the issue would be discussed in a subsequent amendment proposed by the Africa group.
- 67.** The amendment was withdrawn.
- 68.** The Worker Vice-Chairperson introduced an amendment proposing to add a new paragraph on the relationship between HIV/AIDS prevalence and the informal economy. After the fourth paragraph, a new paragraph should be inserted: “Noting the strong interrelation between HIV/AIDS prevalence and the informal economy; recalling the importance of reducing the informal economy by attaining decent work and sustainable development; and”. This amendment was important because it would link HIV prevalence to the specific needs of the informal economy, which was experiencing the bulk of the burden of HIV/AIDS, particularly in southern Africa.
- 69.** The Employer Vice-Chairperson expressed reservations about the proposed amendment. In three countries in Africa, persons in the informal economy had a lower HIV prevalence rate than those in the formal economy. The third paragraph of the Preamble already referred to the serious impact of HIV/AIDS “on society and economies, on the world of work in both the formal and informal sectors”. That reference was sufficient. The statement that there was a “strong interrelation between HIV/AIDS prevalence and the informal economy” was too assertive to be used without specific statistical support.
- 70.** The Worker Vice-Chairperson explained that in many cases, HIV/AIDS prevention interventions had not reached the informal economy. The draft should therefore draw attention to the need to focus on the informal economy.
- 71.** The Government member of France, speaking on behalf of the IMEC group Government members of the Committee, expressed support for the proposed amendment, since the aim of the Recommendation was to maximize the use of the workplace in the fight against HIV/AIDS. That aim was much more difficult to achieve when work was being carried out in the informal economy. Since the ILO was striving to achieve decent work through the formalization of the informal economy, the amendment should be supported.

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72. The Government member of Ghana explained that her delegation could not support the proposed amendment without more research and data to back up the assertion of a linkage between HIV vulnerability and the informal economy. There was insufficient evidence to support the reference to the interrelationship between HIV prevalence and the informal economy.
  73. The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, said that the HIV prevalence rate among workers in the informal economy varied from country to country. In Uganda, for example, studies had shown that HIV prevalence among formal economy workers was increasing and was higher than among informal economy workers. The Africa group Government members of the Committee could therefore not support the proposed amendment.
  74. The Government member of France, speaking on behalf of the IMEC group Government members of the Committee, proposed a subamendment to replace the proposed amendment from the Workers' group with the paragraph: "Recalling the importance of reducing the informal economy by obtaining decent work and sustainable development in order to mobilize the world of work in the struggle against HIV/AIDS; and". He stated that this subamendment would reduce the emphasis on the presumed relationship between the informal economy and HIV transmission and emphasize the importance of promoting decent work, reducing the size of the informal economy and mobilizing the world of work in the struggle against HIV/AIDS.
  75. The Worker Vice-Chairperson noted that, while statistics might show that a large percentage of a country's economy might be in the informal economy, this might not be the case in all countries. Nonetheless the impact of HIV/AIDS on the informal economy was profound, particularly in southern Africa where the informal economy accounted for 95 per cent of local economies. As such, he expressed his acceptance of the subamendment proposed by the Government member of France.
  76. The Employer Vice-Chairperson proposed a further subamendment, to place the focus on creating decent work and responding to HIV/AIDS rather than on reducing the size of the informal economy. The reference to reducing the size of the informal economy should be withdrawn.
  77. The Government member of Chad noted that in the proposed Recommendation there was a reference to the informal economy. He suggested that instead of the word "recalling" the importance of reducing the informal economy, the wording could be changed to "considering" or "deeming the importance of". This would mitigate the assertion that priority should be placed on reducing the size of the informal economy in all contexts.
  78. The Government member of the Côte d'Ivoire expressed his agreement with the Employer Vice-Chairperson's remarks. He suggested leaving the proposed text as it stood, as there was already sufficient attention to the informal economy in the Recommendation. He noted that the link between poverty and HIV/AIDS had been established, but that the link between the informal economy and HIV/AIDS had not. The text should avoid assertions which were not supported by facts.
  79. The Employer Vice-Chairperson withdrew his group's proposed subamendment and expressed support for the subamendment proposed by the Government member of France, speaking on behalf of the IMEC group Government members of the Committee.
  80. The Government member of Ghana expressed agreement with the subamendment proposed by the Government member of France but noted that, in terms of correct terminology, the word "response" to HIV should be used instead of the word "struggle".

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This was more in line with standard UNAIDS phrasing that was developed to remove stigmatizing language that may have a negative effect for people living with HIV and AIDS. This question was referred to the Committee Drafting Committee for its consideration.

81. The amendment was adopted as subamended.
82. Mr Juan Somavia, the Director-General of the ILO, (the Secretary-General of the International Labour Conference) addressing the Committee, noted the importance of tripartism and social dialogue in developing new international labour standards, noting that while the process may seem slow at times, in the end the products were created through a process of consensus that allowed for effective implementation. He noted the early reference of President Sam Nujoma to the magnitude of the HIV problem in Africa. He recalled the ILO's first action on HIV/AIDS over ten years ago, noting that the ILO had found its niche in the HIV/AIDS field by mobilizing tripartite partners and workplaces to reach large segments of the population with HIV programmes. The development of this new international standard would take the work of the ILO and its partners to "the next stage" and would elevate the commitment at national and international levels. He noted challenges due to the financial crisis, which further highlighted the importance of ensuring a sustained world of work response for HIV/AIDS.

### ***Fifth preambular paragraph***

83. The Worker Vice-Chairperson proposed an amendment to insert the words "high levels of social and economic inequality" after the words "Noting that" in the fifth preambular paragraph. In support of the amendment he made reference to a 2007 study undertaken by Dr Peter Piot, the former Executive Director of UNAIDS, which stated that AIDS was a disease of inequality.
84. The Employer Vice-Chairperson supported the amendment and it was adopted.

### ***Seventh preambular paragraph***

85. The Government member of Uganda, on behalf of the Africa group Government members of the Committee, proposed an amendment which sought to replace the word "or" between the words "vulnerable" and "at-risk" with the word "and". He argued that the amendment made the statement more inclusive of vulnerable and at-risk groups.
86. The amendment was adopted with support from the Employer and Worker Vice-Chairpersons.

### ***Eleventh preambular paragraph***

87. The Employer Vice-Chairperson introduced an amendment which sought to delete the words "including those that recognize the right to the highest attainable standard of health and to decent living standards," after the words "HIV/AIDS and the world of work". He argued that the term "world of work" included much of what came later in the paragraph.
88. The Worker Vice-Chairperson did not support the amendment, explaining that the included text added value, and the right to the attainment of the highest standard of health was a right supported by the WHO and contributed to the achievements of the MDGs. The instrument should indicate that health was a right and should not lose reference to decent living standards which were core to the ILO's mandate. The Government members of France, speaking on behalf of the IMEC group Government members of the Committee,



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Kuwait, Spain, speaking on behalf of the EU Member States Government members of the Committee, Uganda and the United States also opposed the proposed amendment, as did the Government member of Argentina, on behalf of the GRULAC group, Government members of the Committee.

89. The Employer Vice-Chairperson withdrew the amendment.
90. The Government member of Uganda, on behalf of the Africa group Government members of the Committee, proposed an amendment which sought to insert the words “and implement” after the word “promote”. He argued that member States were expected to implement the instrument in their respective countries.
91. The amendment was adopted with the support of the Employer and Worker Vice-Chairpersons, and the Government member of Spain, on behalf of the EU Member States Government members of the Committee.

### ***Proposed new paragraph after the eleventh preambular paragraph***

92. The Government member of Uganda, on behalf of the Africa group Government members of the Committee, introduced an amendment to add a new paragraph after eleventh preambular paragraph: “Considering that poverty and unemployment increase the risk of lack of access to prevention, treatment, care and support, therefore increasing the risk of transmission, and”. The Worker Vice-Chairperson supported the amendment. The Employer Vice-Chairperson considered that the amendment was superfluous as a result of the previous amendment adopted by the Committee. The Government member of France, speaking on behalf of the IMEC group Government members of the Committee, supported the amendment while the Government member of Brazil proposed as a subamendment the insertion of the words “social and economic inequality” after the word “poverty” in the amendment proposed by the Africa group Government members of the Committee. The amendment was adopted as subamended by the Government member of Brazil, with the understanding that the Committee Drafting Committee would examine the document to ensure that account would be taken of any superfluous text arising from the previous amendment to the fifth preambular paragraph.

### ***Fifteenth preambular paragraph***

93. The Government member of Spain, on behalf of the IMEC group and EU Member States Government members of the Committee, proposed an amendment which sought to replace the word “in” after the word “structures” by the words “dealing with HIV/AIDS including”, and to add “/AIDS” after “HIV” at the end of the paragraph. She argued that the paragraph should include all stakeholders and not just those working in the health sector, and the amendment would increase the scope of the text. The Employer Vice-Chairperson requested further information on the amendment, but in principle had no objection. The Worker Vice-Chairperson supported the amendment.
94. The Government member of Uganda, on behalf of the Africa group Government members of the Committee, agreed that the amendment was useful and focused. The Government member of Kuwait recalled that WHO has called for inclusion of HIV/AIDS in the health sector. The Government member of the Bolivarian Republic of Venezuela added that the amendment appeared to introduce restrictions rather than widening the scope. She felt it was necessary to increase the scope to include other sectors and not only those involved directly with HIV work. The Government member of Brazil pointed out that the text in Spanish could indeed be interpreted as limiting the scope of the text.

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95. The amendment was adopted with the understanding that the Committee Drafting Committee would better align the different language versions.

### ***Sixteenth preambular paragraph***

96. The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, introduced an amendment which sought to replace the words “governments and employers” with the words “governments, employers” to improve the flow of the sentence. The amendment was supported by the Worker Vice-Chairperson. The Employer Vice-Chairperson introduced a subamendment to introduce the words “employers’ and workers’ organizations and governments” between the word “guide” and the word “in”, arguing that it had to be made clear that the instrument was for governments and not organizations.
97. The subamendment was supported by the Government member of Uganda, on behalf of the Africa group Government members of the Committee, as well as the Worker Vice-Chairperson.
98. The amendment was adopted as subamended by the Employers’ group, and the Committee Drafting Committee would check for accurate translation.
99. The Committee then adopted the Preamble as a whole as amended.

## **I. Definitions**

### ***Paragraph 1***

#### Clause (a)

100. The Employer Vice-Chairperson introduced an amendment which would, after the words “appropriate measures”, replace the rest of the clause with “and behaviours. Without effective intervention and treatment, HIV results in the development of AIDS in almost all infected persons.” Although the definition of HIV had been discussed at length during the Committee’s previous session, and UNAIDS and WHO had been consulted, the Employers’ group wished to delete certain elements that lacked clarity, introduce the concept of the risk attached to behaviour, and broaden the reference to treatment by replacing the words “antiretroviral therapy” by “intervention and treatment”.
101. The Worker Vice-Chairperson said that his group could not support the proposed amendment. Considerable time had been spent discussing the definition of HIV, and the Committee had eventually decided to call on UNAIDS and the WHO for assistance. The product of the work of those experts was currently before the Committee. The inclusion of a reference to behaviours would suggest an element of personal responsibility for infection with the HIV virus. In some cases, such as mother-to-child transmission, there was no such responsibility. Socio-economic conditions could also leave people vulnerable to HIV/AIDS. The proposed Recommendation was not intended to teach a moral lesson, since that could result in people feeling threatened and fewer people getting tested, which would go against the Committee’s intentions.
102. The Government member of France, speaking on behalf of the IMEC group Government members of the Committee, said that while his group understood the concerns of the Employers’ group, it could not support the proposed amendment, since the Committee had decided to refer the issue to a group of experts, and should respect the outcome of that

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decision. The Government member of Kuwait said that the reference to appropriate measures and behaviours should be explained in more specific terms. She agreed with the proposal to replace “antiretroviral therapy” by “intervention and treatment”. The Government member of Nigeria pointed out that when the ILO code of practice had been drafted, the issue of defining HIV had been debated by experts, and a definition had been agreed. He asked why that previously agreed definition had not been used in the draft. The use of antiretroviral therapy alone did not guarantee that a person living with HIV would not develop AIDS. If opportunistic infections were adequately handled, similar results could be achieved. He wondered whether the team of experts might be able to reconsider the definition, since, in its present form, it would not stand up to technical scrutiny. The definition found in the ILO code of practice should be used for the purposes of consistency.

- 103.** The Employer Vice-Chairperson reminded the Committee that while the experts had been asked to contribute to the process of defining HIV, the decision to adopt that definition remained with the Committee. The Worker Vice-Chairperson pointed out that despite the fact that the ILO code of practice contained a definition of HIV, the Committee had still felt the need to call on experts for advice. The new draft went beyond the scope of the ILO code of practice, and the definition therefore required further development.
- 104.** The Government member of Morocco expressed his delegation’s support for the proposed amendment, and pointed out that only the first two sentences of the Paragraph constituted a definition. The remainder of the Paragraph was an explanation. The Government of Uganda, speaking on behalf of the Africa group Government members of the Committee, agreed that only the first two sentences of the Paragraph constituted a definition. The Africa group Government members of the Committee objected to the addition of the words “and behaviours”. The Government member of Nigeria said that it was now up to the Committee to decide whether to accept the definition, or to ask the experts to give it further consideration. The lack of a cure for the infection should not be mentioned in the text, since a cure might be developed in the future. The Government member of Argentina said that since the beginning of the pandemic, changes had been made to the name and the definition of the virus. The Committee should call on the group of experts to arrive at a succinct definition. Any changes the Committee wished to make to the definition included in the draft must receive the approval of UNAIDS.
- 105.** The Employer Vice-Chairperson then proposed to subamend the Employers’ group’s amendment by adding the words “and behaviours” after the word “measures” and deleting the rest of the Paragraph.
- 106.** The Worker Vice-Chairperson argued that the word “behaviours” should be deleted. He stated that the definition could either be decided by the Committee, or that it could be referred to the experts. The Government member of Nigeria believed that the Committee had sufficient expertise in this subject area to decide on a definition of HIV. What was needed was to clarify whether “measures” and “behaviours” were different. He suggested that “measures” could include provision of antiretroviral drugs and other interventions external to the individual. “Behaviours” would refer to what a person himself/herself did. In this way the two terms were complementary.
- 107.** In this regard, the Government member of Brazil suggested that the word “behaviours” was imprecise. The definition of HIV in question was not a general HIV definition but rather a definition targeting the world of work. The question was not just about the survival of people living with HIV, but, rather, about them living and working for an extended period. The Government member of Côte d’Ivoire suggested that it would be useful to define other issues, such as HIV prevention and treatment.

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- 108.** After consultations among the Officers of the Committee, the Worker Vice-Chairperson proposed making a subamendment to delete the reference to “behaviours”. The text would read, “the term ‘HIV’ refers to the human immunodeficiency virus, a virus that damages the human immune system. Infection can be prevented by appropriate measures.” The Employer Vice-Chairperson stressed the importance of behavioural change, but noted that the term “behaviours” could be read into “measures”, and that the draft Recommendation referred to behaviours in other sections. He therefore supported the subamendment, as did the Government members of Ghana, Morocco and the United States.
- 109.** The amendment, as subamended by the Workers’ group, was adopted.
- 110.** Paragraph 1(a) was adopted as amended.
- 111.** A representative from the Brazilian delegation shared his experiences as a worker living with HIV. He had spoken at the Conference last year about his experience. He had lived with HIV for more than 12 years and so could offer practical experience of what it meant to be living with HIV. He noted the definitions in the text and explained that an HIV-positive person was a human being with symptoms of an illness. He said that HIV-positive people could lead normal lives, with normal life expectancies without opportunistic infections, and with normal levels of productivity and could be useful to society. They should not be defined by the disease. It was essential, however, that they received appropriate prevention, treatment, care and support. It was important too that they were able to maintain their dignity. Support and solidarity should be the watchwords that guided the treatment of persons living with HIV. He hoped that the text developed by the Committee would adequately address the issues and concerns of HIV-positive workers. He indicated that he intended to support Brazil in its efforts to contribute to the development of a sound document.

Clause (b)

- 112.** The Employer Vice-Chairperson introduced an amendment on the definition of the term “AIDS” to replace “effectively treated with antiretroviral therapy” with “diagnosed early enough, or at all, or is not effectively treated”. He pointed out that antiretroviral treatment was given an undeserved prominence in the definition and that the focus should be on timely diagnosis.
- 113.** The Worker Vice-Chairperson supported the amendment which also received the support of the Government representatives of Kuwait and Morocco.
- 114.** The Government member of Nigeria recommended that the definition should be rephrased to reflect only what was scientifically accurate and that other details such as the drivers of the epidemic should be addressed elsewhere in the text. He proposed deleting the last part of the definition in the draft document, namely: “defined by the occurrence of opportunistic infections or HIV-related cancers, or both”.
- 115.** The Worker Vice-Chairperson noted that the suggestion from the Government member of Nigeria was useful but his group wanted to maintain a reference to opportunistic infections in the revised definition. The revised phrase should therefore read “results from advanced stages of HIV infection, driven by the occurrence of opportunistic infections”.
- 116.** The Government member of France, speaking on behalf of the IMEC group Government members of the Committee, recommended that the words “and cancers” be reintroduced to the definition in addition to opportunistic infections.

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- 117.** The Government member of Uganda, on behalf of the Africa group Government members of the Committee, agreed with the Government member of France and proposed the following definition: “AIDS refers to the acquired immunodeficiency syndrome, which results from advanced stages of HIV infection and is characterized by opportunistic diseases or cancers or both.” The Employer Vice-Chairperson and the Government member of Nigeria supported the subamendment of the Africa group Government members of the Committee.
- 118.** The Worker Vice-Chairperson requested that a reference to treatment be incorporated in the definition offered by the Africa group Government members of the Committee.
- 119.** The Government member of Nigeria noted that the draft Recommendation was not aimed only at the ILO and its constituents but also at the wider HIV/AIDS community, hence the need to ensure that the definitions were scientifically correct. He argued that the issue of treatment should not be included in the definition, but agreed on the issue of opportunistic infections. The Employer Vice-Chairperson concurred by noting that the text of the draft Recommendation already contained a section on treatment and urged the Committee to eliminate reference to treatment in the definition.
- 120.** The Worker Vice-Chairperson stated that they had listened carefully to the discussions. He proposed returning to the definition of “AIDS” as it was described in the ILO code of practice.
- 121.** The subamendment was not seconded.
- 122.** The amendment was adopted as subamended by the Africa group Government members of the Committee.
- 123.** Paragraph 1(b) was adopted as amended.

Clause (f)

- 124.** The Government member of Spain, speaking on behalf of the IMEC group and EU Member States Government members of the Committee and Norway, proposed an amendment to delete the words “in any way” from the definition of people affected with HIV. She argued that from an implementation point of view, it would be impossible to legislate for people whose lives are changed “in any way” by HIV.
- 125.** The Employer and Worker Vice-Chairpersons and the Government member of Uganda, on behalf of the Africa group Government members of the Committee, supported the amendment.
- 126.** The amendment was adopted.
- 127.** Paragraph 1(f) was adopted as amended.

Proposed new clauses at the end of Paragraph 1

- 128.** The Government member of France, speaking on behalf of the IMEC group Government members of the Committee, explained that the definition of the term “workplace” as well as the definition of the term “worker” (dealt with in another draft amendment) had been agreed upon by the Committee during the first round of discussions, but that they had been removed from the text by the Office. The definitions were broad and flexible and followed the standards of existing international instruments. Precise definitions would also simplify the debate that might arise in regard to Section II “Scope”. The proposed amendment on

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“place of work” suggested the following definition to be added at the end of Section I: “The term ‘place of work’ refers to any place in which workers perform their activity as set out in ILO instruments.”

- 129.** A representative of the Office said that the definitions had been adopted by the Committee in 2009 before the adoption of Section II “Scope”, and the Office suggested that these definitions therefore might not be required. The Committee could of course reinsert definitions of those terms in the text. He noted that a definition of the term “workplace” only existed in ILO instruments relating to occupational safety and health, and the term “workers” was not defined in any one ILO instrument.
- 130.** The Chairperson reminded the Committee that the discussion should only focus on the definition of “place of work” and that the discussion on the definition of “worker” should be discussed as a separate amendment.
- 131.** The Employer Vice-Chairperson supported the amendment as put forward by the Government member of France, speaking on behalf of the IMEC group Government members of the Committee.
- 132.** The Worker Vice-Chairperson said that if there were no definitions in ILO instruments, the Committee must find its own relevant definitions. However, if the addition of new definitions resulted in changes to Section II “Scope”, the Workers’ group could not support them.
- 133.** The Government member of Brazil said that a definition of workplace was essential. The Committee could make use of the definition in existing ILO occupational safety and health instruments. The first part of the definition as found in the amendment was of vital importance to the work of the ILO and its partners. It should be incorporated into the definitions section of the text. The proposed definition should eliminate the phrase “as defined by ILO instruments” and read as “The term ‘place of work’ refers to any place in which workers perform their activity.” The Government member of Uganda, on behalf of the Africa group Government members of the Committee, and the Government members of Argentina and the Bolivarian Republic of Venezuela concurred with this suggestion. The Employer Vice-Chairperson expressed support for the subamendment, provided that the words “place of work” be replaced by “workplace”. The Worker Vice-Chairperson agreed with the amendment, provided that there would be no change in Section II “Scope”.
- 134.** The Government member of France, on behalf of the IMEC group Government members of the Committee, reiterated that a discussion on a definition of “workplace” was necessary. He noted that Section II “Scope” stated that the draft Recommendation would cover all workplaces.
- 135.** The Government member of Nigeria asked whether the phrase “as referred to in ILO instruments” in the proposed definition of “place of work” referred to Occupational Safety and Health Convention, 1981 (No. 155). There was a danger in having the “workplace” defined differently in various ILO documents.
- 136.** A representative of the Office explained that Safety and Health in Construction Convention, 1988 (No. 167) and Safety and Health in Construction Recommendation, 1988 (No. 175), and Occupational Safety and Health Convention, 1981 (No. 155) and Occupational Safety and Health Recommendation, 1981 (No. 164), had different definitions of “workplace”. These definitions referred only to workplaces under the control of employers. The definition offered in the subamendment, however, was broader, because it was not limited to those under the control of an employer.

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- 137.** The Worker Vice-Chairperson stated that there was already sufficient consensus on the term “workplace”. As long as the Workers’ group was assured that the definition of “workplace” would not reduce the scope of coverage of the Recommendation, they would accept the amendment as put forward by the Government member of France, on behalf of the IMEC group Government members of the Committee, and further amended by Brazil and the Employers’ group.
- 138.** The amendment was adopted as subamended.
- 139.** The proposed new clause to Paragraph 1 was adopted as amended.
- 140.** The Government member of France, speaking on behalf of the IMEC group Government members of the Committee, briefly stated that what he had said earlier concerning the previous amendment also related to the discussion of the definition of “workers” and that the proposed definition was inclusive and would not limit the scope of coverage of the Recommendation. The proposed definition in the amendment was: “The term ‘workers’ refers to persons working in any form, as set out in the relevant ILO instruments.”
- 141.** The Employer Vice-Chairperson suggested deleting the reference “as set out in the relevant ILO instruments”.
- 142.** The Worker Vice-Chairperson responded with a subamendment that would place an additional phrase on the proposed definition: “as defined in Section II Scope”.
- 143.** The Government member of France, speaking on behalf of the IMEC group Government members of the Committee, stated that, while he had no objection in substance, to the proposal of the Workers’ group, he was concerned about importing definitions from other sections. Definitions should be refined in sections that cover scope rather than being defined in those sections.
- 144.** The Worker Vice-Chairperson stated the definition of worker should be revised from “persons working in any form” to “all workers without distinction of any kind, working in all workplaces.”
- 145.** The Employer Vice-Chairperson stated that if they were to accept the suggestion of the Worker’s group, Section II “Scope” would no longer be needed because there would be no distinguishing features to be enumerated in that Section.
- 146.** The Government member of Brazil expressed support for the Workers’ subamendment.
- 147.** The Government member of Zambia expressed concern over the proposed definition from the Workers’ group that included the word “workers” in the definition. He suggested that it be replaced with the term “persons”.
- 148.** The Government member of France, speaking on behalf of the IMEC group Government members of the Committee, clarified that “worker” (in the singular) meant any worker anywhere but noted that the Government member of Zambia had presented a reasonable compromise.
- 149.** The Worker Vice-Chairperson introduced a subamendment so that the proposed amendment would add, at the end of Paragraph 1, “The term ‘worker’ refers to persons working under all forms or arrangements.” The primary intent of the Workers’ group was to ensure that the definition of “worker” was as inclusive as possible, so that, for instance, it covered workers who might be currently out of work in order to guarantee continuity of treatment. The Workers’ group was in a position to agree with the definition on the

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understanding that it did not interfere with coverage determined by the scope of the proposed Recommendation (proposed Paragraph 2).

- 150.** The Employer Vice-Chairperson supported the subamendment.
- 151.** The Government member of Chad reminded the Committee that the ILO's focus was on workers at work and in many countries those not currently employed were adequately covered by social security schemes. He urged the Committee not to confuse these two categories.
- 152.** The Worker Vice-Chairperson explained that the ILO code of practice was intended to cover a wide range of persons, and the scope of the draft Recommendation already extended beyond persons at work. The definition should therefore be as comprehensive as possible.
- 153.** The amendment, as subamended, was adopted.
- 154.** The proposed new clause to Paragraph 1 was adopted as amended.
- 155.** The Committee then proceeded to adopt Paragraph 1 as amended.

## **II. Scope**

### ***Paragraph 2***

#### Sub-clause(a)(ii)

- 156.** The Employer Vice-Chairperson introduced an amendment to replace sub-clause (ii) by "persons in training, including interns and apprentices", in order to make the section on the scope more inclusive. His group subamended the amendment, by replacing the word "persons" by "those".
- 157.** The Worker Vice-Chairperson supported the proposed amendment, as subamended.
- 158.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, as well as the Government members of Algeria, Australia and the United States, also expressed support for the amendment as subamended.
- 159.** The amendment, as subamended, was adopted.

#### Sub-clause (a)(iii)

- 160.** The Government member of Australia introduced an amendment to Paragraph 2(a)(iii) which would add "supplementing public services and initiatives", after the word "volunteers". The amendment was intended to capture in the scope of the instrument volunteers who supplemented workforces not otherwise included in employment relationships.
- 161.** The Employer Vice-Chairperson said that since clause 2(a) included the words "working under all forms or arrangements", all volunteers would be covered by the instrument, and the amendment as proposed by Australia would in fact restrict the scope. His group therefore could not support the proposal. The Worker Vice-Chairperson agreed, and emphasized that the instrument must have the broadest scope possible.



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**162.** The Government member of Australia withdrew the amendment.

Sub-clause (a)(iv)

**163.** The Employer Vice-Chairperson introduced an amendment which proposed the deletion of the words “jobseekers and” from sub-clause (iv), and explained that since the term “jobseekers” did not occur anywhere else in the text it was unnecessary to include it in the scope.

**164.** The Worker Vice-Chairperson said that his group could not support the proposed amendment, since the instrument must strengthen the principles set out in the ILO code of practice. The inclusion of jobseekers in the scope of the instrument enriched the text, which must have a broad enough coverage to enable the progressive development of legislation.

**165.** The Government member of Brazil, speaking on behalf of the GRULAC group Government members of the Committee, agreed that the proposed amendment could not be supported, since it would narrow the scope of implementation of the proposed Recommendation. The Government member of France also preferred the widest scope possible. The Government member of the United States pointed out that the draft instrument also referred to “recruitment”, which could include instances where employers initiated the contact with workers.

**166.** The Employer Vice-Chairperson withdrew the amendment.

Sub-clause (a)(v)

**167.** The Employer Vice-Chairperson introduced an amendment to replace in the French version of the draft Recommendation the term “mis à pied” with “suspendus”. He asked whether this translation would better capture the term “laid-off” which had several implications. Clarification was needed on whether the term meant “terminated” or someone made “redundant”.

**168.** The Worker Vice-Chairperson said that the phrase “laid-off” should be kept, to keep the notion as broad as possible. “Laid-off” could cover a situation where worker was put out of a job due to declining business. In this case the worker was not “dismissed”, as he or she would be waiting to be called back. For such a worker, any HIV-related services should continue. Another case would be retrenchment due to economic conditions, in which a worker could be off work for a longer period of time. Even though retrenchment was virtually terminating the worker’s services, if there was a provision of HIV services, then there must be a transition to public health services. He noted that workers suspected of misconduct, or under investigation, should not be discriminated against and should have their treatment continued. Suspended workers could be considered “laid-off” until their alleged misconduct was clarified.

**169.** The Employer Vice-Chairperson questioned whether the situations enumerated by the Worker Vice-Chairperson were adequately covered by the French phrase “mis à pied”.

**170.** The Government member of France said that the question should be referred to the Committee Drafting Committee in light of discussion on this term.

**171.** The Government member of Algeria explained that the French term “mis à pied” in her country’s legislation referred to a sanction or disciplinary action against a worker and she recommended that the term “suspension” be used instead. The Government member of

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Mali concurred. The Government member of Argentina pointed out that a different translation of the term might be required in the Spanish text also.

172. The Employer Vice-Chairperson advised that the nuances of the term as evidenced in the discussions should be captured to enable the Committee Drafting Committee to develop the appropriate text.
173. A Worker member explained that it was nonetheless important to keep the sense of a disciplinary action against a worker under the scope, as any denial of HIV-related services would result in a double punishment. He suggested using “*mis à pied et/ou suspendus*”.
174. The Employer Vice-Chairperson pointed out that the intention of the Paragraph was to define coverage and that action-related matters could be addressed at a later point in the text.
175. The Worker Vice-Chairperson advised that his group would support language that was all-inclusive. The Committee agreed that the matter would be referred to the Committee Drafting Committee.

Proposed new sub-clauses after  
Paragraph 2(a)(v)

176. The Government member of Uganda on behalf of the Africa group Government members of the Committee introduced an amendment to add a new sub-clause after subparagraph 2(a)(v): “seasonal and casual or temporary workers; and”. He indicated that such workers constituted vulnerable groups and should be included so that they could have the right to access prevention, treatment, care and support.
177. The Worker Vice-Chairperson supported the amendment.
178. The Employer Vice-Chairperson was of the view that the existing text provided coverage to all workers in all workplaces and included specific groups that had been considered to be outside the ambit of the scope. To add to that list would result in a narrower scope because it could invite exclusion of others. The Government member of France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, noted that they had submitted an amendment to be discussed later, that would ask for a deletion in Paragraph 2 of a reference to a specific group, since the existing text covered all workers. As such, they could not support the amendment.
179. The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, stated that it had taken into account the views of the Employers’ group and the IMEC group Government members of the Committee and realised that the introduction of this amendment would have reduced the scope of the Recommendation. Based on this, the Africa group Government members of the Committee withdrew the amendment.
180. The amendment was withdrawn.
181. The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, proposed an amendment to add a new sub-clause after 2(a)(v): “migrant workers.” The Government member of Uganda, on behalf of the Africa group Government members of the Committee, withdrew the amendment without discussion.
182. The amendment was withdrawn.

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Clause (c)

- 183.** The Government member of Spain, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, introduced an amendment to delete clause (c) on armed forces and uniformed services, and argued that there was no need to mention armed forces and uniformed services explicitly since they were included in 2(a), which referred to “all workers”.
- 184.** The Worker Vice-Chairperson did not support the amendment. Armed forces and uniformed services were not generally covered under labour laws and required special attention with respect to HIV/AIDS. UNAIDS recognized armed forces and uniformed services as an important group for HIV programmes, and this group required specific mention in the Recommendation. The Government member of Brazil, speaking on behalf of the GRULAC group Government members of the Committee, the Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, and the Government members of Algeria and Zimbabwe supported this position.
- 185.** The Employer Vice-Chairperson stated that the Employers’ group was neither in support of nor against the amendment, and Governments should provide the key input.
- 186.** The Government member of the Netherlands sought clarification from the Office as to whether the armed forces and uniformed services were covered by ILO instruments.
- 187.** A representative of the Office noted that there were four ILO Conventions which mentioned the armed forces and police, in each case allowing them to be excluded from the coverage of the instruments.
- 188.** The Government member of Chad pointed out that there were specific programmes for military personnel in Chad. There were civilian personnel working in the armed forces and the police.
- 189.** The Government member of France, speaking on behalf of the IMEC group Government members of the Committee, argued that there was consensus that armed forces and uniformed services would be covered in the Recommendation. Clause 2(a) included “all workers” so it was not necessary to mention armed forces and uniformed services explicitly in a separate clause. Whether or not armed forces were covered in national labour laws was not an issue because the Recommendation already included them. The purpose of the amendment was to reduce any confusion in interpreting the scope.
- 190.** The Worker Vice-Chairperson argued that there was no need to exclude the armed forces and uniformed services. If it were true that on occasion the health systems within the armed forces were more advanced, then it made sense to include them. The inclusion of clause 2(c) was not meant to unionize the armed forces. The need for a defence force which had access to all life-support programmes was essential.
- 191.** The Government member of Spain, speaking on behalf of the IMEC group Government members of the Committee, withdrew the amendment.

Proposed new clauses after Paragraph 2(c)

- 192.** The Government member of the Netherlands, speaking on behalf of the Government members of Spain and Sweden, introduced an amendment to insert a new clause after clause (c): “(d) sex workers”. She argued that sex workers were an important target group in the HIV/AIDS response, and they faced numerous challenges to their safety, health and

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social protection. When they remained unrecognized, it was difficult to develop effective programmes to ensure the prevention, reduced stigma and discrimination and access to HIV treatment and care they needed. The employment rights of sex workers with HIV should also be recognized. The responsibility of sex workers, their employers and their clients to ensure safer sexual behaviours should also be an inherent part of the AIDS response. It was not the intention to raise issues of the legality of sex work but to instead ensure that sex workers' basic rights were covered in the Recommendation.

- 193.** The Worker Vice-Chairperson expressed full support for the amendment. He argued that sex workers were a high-risk group, often exploited by their employers and their clients, and had little access to public health services. Sex workers lacked labour and social protection, and their needs should be highlighted to the public. The Government member of Brazil also supported the proposed amendment.
- 194.** The Employer Vice-Chairperson said that the question of the inclusion of a specific reference to sex workers was problematic, since his group had no institutional involvement with this sector. Sex workers were not identified specifically in the context of the world of work. While his group recognized the importance of protecting sex workers, it could not support the inclusion of that reference in Paragraph 2(a) of the document.
- 195.** The Government member of France said that sex workers were not a legally recognized category of workers in most countries, but should be covered by the proposed Recommendation. He proposed a subamendment to replace the phrase "sex workers" with "the sex industry" because sex workers, for the most part, fell outside the scope of most national legal systems.
- 196.** The Government member of Morocco stated that, as a Muslim country, it could not recognize people selling sex as a category of workers or any industry of sex workers and, therefore, could not support either the amendment or the subamendment. The Government member of Algeria agreed with this position.
- 197.** The Worker Vice-Chairperson pointed out that since Paragraph 2(a) dealt with all categories of workers, rather than industries, his group could not support the subamendment.
- 198.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, said that his group could not support either the amendment or the subamendment. In most countries sex work was illegal, and identifying the sex industry in the text would give that industry a sense of legitimacy, which it should not have. While sex workers should be protected and sensitized to the risks they faced, they should not be singled out in the instrument.
- 199.** The Government member of France withdrew the subamendment he had proposed. His Government could not support the amendment, since sex workers were not a legal category of workers.
- 200.** The Worker Vice-Chairperson said that the instrument should cover all aspects of protection for workers, whatever their workplace, and whether their work was legal or not. In order to address the HIV/AIDS pandemic, sex workers should be protected. Although the members of the Committee came from different backgrounds and would respond differently to different issues, the proposed Recommendation would be an international instrument, which should be broadly applicable. Recommendations were intended to be a guide to national laws and policies: the content of the Recommendations should not be defined by them. Despite different backgrounds and country situations, sex workers existed all over the world. His group strongly supported the proposal to include sex workers as a

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specific category under Paragraph 2(a), since turning a blind eye could result in the defeat of the ideals that the Committee was seeking to promote.

- 201.** The Employer Vice-Chairperson said that at its previous session in 2009, the Committee had drafted a document that had included all areas of economic activity and had held long discussions on formal and informal economies. The issue of sex work was particularly difficult to categorize, since it could fall within the purview of formal and informal economies. His group considered that there was no need to include a specific reference to sex workers under Paragraph 2(a), since they could be considered to be covered by 2(b): “all sectors of economic activity, including the private and public sectors and the formal and informal economies.”
- 202.** The Government member of the Netherlands welcomed the broad support for the amendment, which demonstrated that the needs of sex workers were of concern to many. Her delegation would withdraw its proposed amendment, on the understanding that sex workers were included in Paragraph 2(a) on all workers working under all forms or arrangements at all workplaces.
- 203.** The amendment was withdrawn.
- 204.** The Worker Vice-Chairperson introduced an amendment, which was identical to that offered by the Netherlands. He stated that the needs of sex workers must be brought into the mainstream of prevention, care and treatment. They were a risk group, often working outside the realm of the law and, as a result, were discouraged from accessing health services. If this critical group were to be left out, it would undermine HIV/AIDS prevention efforts. In the light of the discussion that had taken place on the previous amendment, the Worker Vice-Chairperson asked the Committee to confirm its understanding that Paragraph 2(a) referring to “all workers” included sex workers.
- 205.** The Employer Vice-Chairperson noted that the Recommendation did cover sex workers either through Paragraph 2(a) and/or 2(b). Regardless of whether they worked in formal or informal economies or whether their work was deemed legal or illegal, they were covered in the scope of the Recommendation.
- 206.** The Government member of the United States stated that the scope of the Recommendation was very broad, covering all workers, including formal and informal economies. Under Section II of the Recommendation, sex work was already included, and there was no need to mention the group explicitly. The Government member of France supported the interpretation of the Employer Vice-Chairperson and the Government member of the United States. The Government members of Algeria and the Netherlands expressed their agreement with this position.
- 207.** The Worker Vice-Chairperson again sought confirmation for the record, that in terms of Paragraph 2(a) and 2(b), the Committee understood that sex work was included.
- 208.** The Chairperson stated that her impression of the discussion by the Committee members was that Paragraph 2(a) and 2(b) covered all workers, whether formal or informal. Moreover, it was her understanding that the Government member of the Netherlands had previously withdrawn their amendment because sex workers were considered as already being covered under 2(a).
- 209.** The Worker Vice-Chairperson stated that, because the Committee had accepted that sex work was covered by 2(a) and 2(b), the Workers’ group would withdraw the amendment.
- 210.** The amendment was withdrawn.

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- 211.** An amendment was proposed to insert a new sub-clause “pensioners or retired persons”. The Government member of Uganda, on behalf of the Africa group Government members of the Committee, withdrew the amendment.
- 212.** The Worker Vice-Chairperson proposed an amendment to insert a new sub-clause: “domestic workers”. He noted that domestic workers often worked in difficult conditions and were often excluded from national legislation. Domestic workers were vulnerable to HIV transmission and should be mentioned as a special category.
- 213.** The Employer Vice-Chairperson recognized the important role played by domestic workers in many economies. Employers did not have experience representing domestic workers. Domestic workers were sometimes covered in national social protection programmes but not under the supervision of enterprises. Domestic workers could be assumed already to be covered in Paragraph 2(a)(i). The Government member of the United States concurred and did not support the amendment.
- 214.** The Worker Vice-Chairperson stated that, based on the understanding of the Committee that domestic workers were included in Section II, he would withdraw the amendment.
- 215.** The amendment was withdrawn.
- 216.** Paragraph 2 was adopted as amended.
- 217.** Mr Ronald Brands, adviser to the Government of the Netherlands delegation to the Conference in the field of HIV and the world of work and a person living with HIV, said that stigma and discrimination could no longer be accepted since people living with HIV lived normal lives as a result of medical developments. HIV was now considered to be a treatable chronic disease. People living with HIV were at risk of losing their incomes, homes and access to health care due to misinformation and miscommunication on the issue of HIV transmission in the workplace, resulting in discrimination. Restrictions for people living with HIV existed on several levels and were discriminatory and lacked a public health rationale. He urged the Committee to translate their diverse experiences into a balanced and powerful instrument that would assist in improving prevention, reducing stigma and discrimination and increasing access to treatment and care. He further urged support for the involvement of people living with HIV in all levels of the process.

### **III. General principles**

#### ***Paragraph 3***

- 218.** The Worker Vice-Chairperson introduced an amendment to insert the words “and gender equality” after the word “freedoms” in Paragraph 3(a).
- 219.** The Employer Vice-Chairperson supported the amendment with the request that the grammar in the clause be improved by the Committee Drafting Committee.
- 220.** The Africa group Government Members of the Committee and the Government member of Algeria supported the amendment.
- 221.** The amendment was adopted with the provision that the Committee Drafting Committee would correct the grammar, as needed.

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- 222.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee introduced two amendments to 3(c). The first was to insert the words “jobseekers and” after the words “in particular” so as to retain consistency with what had been covered under the scope of the instrument, and to maintain visibility of that group. The second amendment was to insert the words “regions of the world or” after the words “belong to” also in 3(c), since regions with high prevalence could be subject to similar discrimination as segments of the population.
- 223.** The Employer Vice-Chairperson supported the amendment. The words “jobseekers” should appear wherever the words “job applicants” appeared in the text.
- 224.** The Worker Vice-Chairperson and the Government members of France and Japan supported the amendment.
- 225.** The amendment was adopted.
- 226.** The Employer Vice-Chairperson introduced an amendment to 3(e), after the word “workplace”, to replace the word “should” with the word “can”. The Employers’ group wished to retain the text that was in the report of the discussion last year. While there was an opportunity for the world of work to play a role in the response, that role should not be compulsory.
- 227.** The Worker Vice-Chairperson did not support the amendment. He stated that the amendment would weaken the general principle of the Recommendation and would create flexibility where there should be none. It was essential that the Recommendation include provisions for treatment, care and support.
- 228.** The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, agreed with the views of the Workers’ group. The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, noted that the amendment would negate the spirit of the Recommendation. The tone should be obligatory rather than flexible. The Government member of Morocco concurred with the views expressed by Government members.
- 229.** The Employer Vice-Chairperson withdrew the amendment.

Proposed new clause between  
clauses (e) and (f)

- 230.** The Employer Vice-Chairperson introduced an amendment to add a new clause between clauses (e) and (f) as follows: “workers’ individual responsibility to access, participate and cooperate in the implementation of national and workplace programmes should be recognized and reinforced;”. The issue of behaviour change should be retained in the text. While employers would ensure that services were available for HIV-positive workers, there should be individual responsibility with respect to such services, and there should be a two-pronged approach to the response to HIV.
- 231.** The Worker Vice-Chairperson did not support the amendment since it sought to put the responsibility for the national policy on to individual workers. The Government member of the Dominican Republic, speaking on behalf of the GRULAC group Government members of the Committee, supported the Workers’ position.

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- 232.** The Employer Vice-Chairperson explained that the amendment was focused on the issue of general principles rather than individual responsibility and suggested that the word “expectation” might be a more appropriate one than “responsibility”. He sought the input of the Committee to improve the amendment.
- 233.** The Employer Vice-Chairperson said that the implementation of any HIV programme had two aspects: the provision of measures by enterprises and member States, and the willingness of all individuals to accept and apply those measures. Where behavioural change was required there had always been an obligation for workers to be accountable and responsible. For example, Convention No. 155 provided in Article 19(a) that “workers, in the course of performing their work, co-operate in the fulfilment by their employer of the obligations placed upon him”, and in Article 20 it provided that “Co-operation between management and workers and/or their representatives within the undertaking shall be an essential element of organisational and other measures taken in pursuance of Articles 16–19 of this Convention”. All persons at all levels had an individual responsibility for the implementation of programmes to end the scourge of HIV/AIDS.
- 234.** The Worker Vice-Chairperson said that despite the explanations from the Employers’ group, his group could not support the proposed amendment. Convention No. 155 cited by the Employers’ group dealt with specific safety systems, in which the ultimate responsibility lay with the employers, and workers could be required by an employer to cooperate. If cooperation were to be required by employers with respect to the HIV programmes, stigma and discrimination could result. While his group would accept the reference to behavioural change later in Paragraph 16 of the draft Recommendation, it could not accept the proposed amendment.
- 235.** The Government member of Spain, speaking also on behalf of the Government members of Australia and France, proposed a subamendment to replace the words “individual responsibility to access, participate and cooperate in the implementation”, by, “participation and engagement in the design, implementation and evaluation”.
- 236.** The Employer Vice-Chairperson further subamended the subamendment presented by the Government member of Spain, to replace the words “participation and engagement” by the word “role”.
- 237.** The Worker Vice-Chairperson said his group would support the subamendment as proposed by Spain, but could not accept the changes proposed by the Employers’ group. The Government members of Canada, Luxembourg, Morocco and the United States also supported the same position.
- 238.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, expressed support for the subamendment, as subamended by the Employers’ group, since it was a more accurate reflection of the original spirit of the amendment.
- 239.** The Worker Vice-Chairperson did not support the subamendment proposed by the Employers’ group. The word “role” was not defined in the instrument and might lead to confusion.
- 240.** The Employer Vice-Chairperson stated that the discussion related to section III on the general principles of the draft Recommendation. Issues of role and engagement would be discussed specifically elsewhere.



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- 241.** The Government member of France agreed with the Workers' group that the term "role" was too general, and that "participation and engagement" were more precise. The Government member of Brazil, speaking on behalf of the GRULAC group Government members of the Committee, as well as the Government members of Morocco and Spain, voiced their opposition to the Employers' group's subamendment.
- 242.** The Employer Vice-Chairperson withdrew his group's proposed subamendment.
- 243.** The amendment, as subamended by the Government member of Spain, was adopted so that a new clause was added between clauses (e) and (f) to read: "workers' participation and engagement in the design, implementation and evaluation of national and workplace programmes should be recognized and reinforced."
- 244.** The Worker Vice-Chairperson introduced an amendment to add, at the end of clause 3(f), the words "such as TB". According to reports by the WHO and UNAIDS, one third of HIV-positive people also had TB, and, in some countries, TB was the cause of death of up to half of the people with AIDS. Action against HIV and TB should go hand in hand.
- 245.** The Employer Vice-Chairperson supported the amendment, noting also the emerging problem of drug-resistant forms of TB. In the final draft "tuberculosis" should be spelled out.
- 246.** The amendment also drew support from the Government member of France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, the Government member of the Dominican Republic, speaking on behalf of the GRULAC group Government members of the Committee, and the Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee.
- 247.** The amendment was adopted.
- 248.** The Government member of Spain, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, introduced an amendment to insert after the word "workers" in Paragraph 3(g), the words "their families and dependants" so as to be consistent with the wording in 3(a) and 3(e).
- 249.** The amendment was supported by both the Employer and Worker Vice-Chairpersons, and the Government members of Algeria, Kuwait and Uganda, speaking on behalf of the Africa group Government members of the Committee.
- 250.** The amendment was adopted.
- 251.** The Government member of Iraq introduced an amendment, seconded by the Government member of Egypt, to replace clause 3(h) with the following: "workers may be required to undertake an HIV test; and". He noted that people needed to know their status so as to be able to access treatment early.
- 252.** The Worker Vice-Chairperson did not support the amendment since the aim of the Committee was to improve on the ILO code of practice, which did not support mandatory testing as it was a violation of inherent human rights. The Workers' group did not support mandatory testing in any form.
- 253.** The Employer Vice-Chairperson noted that while the document recognized the importance of testing for managing HIV, it recognized also that individual freedoms and rights should be protected and sought to balance both requirements. The voluntary nature of testing

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should be maintained. The proposed amendment implied mandatory testing and he therefore did not support the amendment.

**254.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, did not support the amendment since it implied mandatory testing which would serve as a discouragement to workers. The Government member of Mali, noting that his country had laws that banned obligatory testing, also opposed the amendment. The Government member of Mexico, speaking on behalf of the GRULAC group Government members of the Committee, opposed the amendment since it would infringe human rights. The Government member of Nigeria did not support the amendment because mandatory testing often drove HIV-positive persons underground, in addition to violating human rights principles.

**255.** The amendment was withdrawn.

#### Proposed new clause at the end of Paragraph 3

**256.** The Government member of France, speaking on behalf of the IMEC group and the EU Member States Government members of the Committee, introduced an amendment to add a new clause at the end of Paragraph 3 as follows: “the protection of workers in occupations that are particularly exposed to the risk of HIV transmission”. The proposed new clause would emphasize protection for workers exposed to the risk of occupational transmission. In the first discussion, his group had strongly insisted on the strengthening of this component in the general principles.

**257.** The Worker Vice-Chairperson supported the amendment.

**258.** The Employer Vice-Chairperson did not support the amendment. He noted that both clauses 3(d) and 3(f) already addressed the issue of occupational transmission of HIV and the added clause would be redundant.

**259.** The Government members of Kuwait and Nigeria, and the Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, agreed with the Employers’ group’s position and did not support the amendment.

**260.** The Government member of France recalled that the concept of particular occupations exposed to the risk of HIV had been included under the general principles at Point 6(f) of the Conclusions adopted last year but had disappeared from the current text.

**261.** The Worker Vice-Chairperson maintained his support for the amendment and concurred with the views of France. The proposed amendment was broader than Point 6(f) which was confined to the issue of prevention programmes. The amendment should be included even if it seemed redundant, as it was a necessary tautology.

**262.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, proposed deleting clause (f) and adopting the amendment, since the amendment was broader, as long as the reference to TB that was in clause (f) was added. The Government member of Nigeria agreed with this position.

**263.** The Worker Vice-Chairperson expressed his group’s continued support for the amendment and agreed to the suggestion of the Africa group Government members of the Committee to include the reference to TB. However, he did not agree to the removal of clause (f).

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- 264.** The Government member of Morocco noted that the adoption of the amendment would necessitate the defining of occupations where workers were particularly exposed to the risk of HIV transmission. He did not support the amendment.
- 265.** The Government member of the Netherlands proposed combining the amendment with clause (f).
- 266.** After a reminder from a representative of the Office that clause (f) had already been adopted, the Committee dropped consideration of actions related to clause (f).
- 267.** The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, expressed her strong support for the comments of the Government member of Morocco and did not support the amendment. She argued that it was essential for the proposed Recommendation to have a broad coverage and that the reference to specific occupations where workers were at particular risk of HIV transmission could be restrictive and make countries focus on only those occupations.
- 268.** The Government member of France noted that the two issues of concern to Governments opposing the amendment were repetition and restriction. Regarding repetition, he noted that 3(f) was directed at all workers through prevention programmes. The proposed amendment addressed workers whose activities exposed them to a higher risk of HIV transmission. The amendment was not meant to introduce a restriction, but to highlight occupations where workers were exposed to particular risks.
- 269.** The Chairperson noted that the amendment had the support of the Workers' group and the Government members of the Committee of the Africa group, the EU Member States Government members of the Committee and the IMEC group Government members of the Committee. The Employers' group, the GRULAC group Government members of the Committee, Kuwait and Morocco opposed the amendment.
- 270.** Since the majority of Committee members supported the amendment, it was adopted.
- 271.** Paragraph 3, as amended, was adopted.

#### **IV. National policies and programmes**

##### ***Paragraph 4***

- 272.** The Government member of Spain, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, presented an amendment to insert the words "including income-generating strategies," after the word "strategies." This was related to highlight the importance of access to income as an integral part of HIV prevention and treatment.
- 273.** The Worker Vice-Chairperson supported the amendment and proposed a subamendment to include the words "decent work and" before "income-generating strategies" to highlight the relation between HIV and socio-economic inequality. The Recommendation should promote decent work as part of the HIV/AIDS response, and decent work should be mainstreamed into all ILO activities because it was the foundation for improving social justice.

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274. The Employer Vice-Chairperson proposed a further subamendment to insert the words “and productive” between “decent” and “work”, noting that decent work should also be productive.
275. The Worker Vice-Chairperson rejected the subamendment proposed by the Employers’ group, noting that there was no need to bring the issue of productivity into the discussion.
276. The Government member of Brazil and the Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, supported the subamendment from the Workers’ group but rejected the proposal from the Employers’ group, noting that the issue of productivity was not related to the discussion.
277. The Employer Vice-Chairperson pointed out that work was not always productive and recalled that the United Nations General Assembly had recognized the ILO concept of decent work, but stated that it must be productive to achieve the MDGs. Decent work and income-generating strategies could only be sustainable through productive work. The Government member of Kuwait supported this position.
278. The Worker Vice-Chairperson pointed out that governments would only devise national policies and income-generating strategies that were sustainable. Recognition of decent work was sufficient to support the MDGs without a specific reference to productivity.
279. The Employer Vice-Chairperson proposed replacing the words “and productive” with the words “and sustainable”, thus making reference to “decent and sustainable work” in an effort to meet the concerns of the Workers’ group.
280. The Employer Vice-Chairperson proposed amending the text to read, “including decent work, sustainable enterprises and income-generating strategies”.
281. The Worker Vice-Chairperson accepted the proposal, which was supported by the Government members of Algeria, Brazil, and Kuwait as well as the Government member of Ghana, on behalf of the Africa group Government members of the Committee.
282. The amendment was adopted as subamended.
283. The Worker Vice-Chairperson withdrew the amendment on Paragraph 4(b), which would have asserted “including decent work and income-generating activities” because the concerns of the Workers’ group on this issue had been addressed in the previous discussion on the subamendment of 4(b).
284. Paragraph 4 was adopted as amended.

### **Paragraph 5**

285. Paragraph 5 was adopted without amendment.

### **Paragraph 6**

286. The Government member of France, speaking on behalf of the IMEC group Government members of the Committee, proposed a rewording of the Paragraph as follows: “The national policies and programmes should be developed by the competent authorities, in consultation with the most representative employers’ and workers’ organizations, as well as organizations representing persons living with HIV and AIDS, taking into account the views of relevant sectors, especially the health sector.” This would highlight the

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fundamental role of people living with HIV and AIDS in developing national policies and programmes.

**287.** The Employer Vice-Chairperson supported the amendment.

**288.** The Worker Vice-Chairperson agreed to the amendment.

**289.** The Government member of Ghana, speaking on behalf of Africa group Government members of the Committee, supported the amendment.

**290.** The amendment was adopted.

**291.** Paragraph 6 was adopted.

### ***Paragraphs 7 and 8***

**292.** Paragraphs 7 and 8 were adopted without amendment.

## **Discrimination and promotion of equality of opportunity and treatment**

### ***Paragraph 9***

**293.** The Government member of the United Kingdom, speaking on behalf of Australia, Canada, France, Germany and the United States, proposed to replace Paragraph 9 with the following: “Governments, in consultation with the most representative employers’ and workers’ organizations should consider affording protection equal to that available under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) to prevent discrimination based on real or perceived HIV status.” The purpose was to stress that people living with HIV and AIDS should have the same rights as those specified in Convention No. 111, even if countries had not adopted this Convention, and despite the fact that people with HIV and AIDS were not mentioned in the scope of this Convention. The Employer Vice-Chairperson agreed but requested that the French translation be reviewed.

**294.** The Worker Vice-Chairperson asked for clarification on the reference to the Convention No. 111. A representative of the Office said that the reference to the Convention was technically correct and would not weaken Convention No. 111.

**295.** The Worker Vice-Chairperson supported the amendment along with the Government member of the Bolivarian Republic of Venezuela, on behalf of the GRULAC group Government members of the Committee, and the Government member of Ghana, on behalf of the Africa group Government members of the Committee.

**296.** The amendment was adopted.

**297.** Paragraph 9 was adopted as amended.

### ***Paragraph 10***

**298.** The Government member of the United Kingdom, on behalf also of the Governments of Germany, Hungary and Poland, introduced an amendment to replace the words “a cause to prevent” with the words “the grounds for discrimination preventing the”, and after the

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word “generally” add the words “consistent with the provisions of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)”. He further introduced a subamendment to remove the word “generally” from the Paragraph in order to address all grounds for discrimination.

- 299.** The Employer and Worker Vice-Chairpersons supported the amendment as subamended. The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, also supported the amendment as subamended.
- 300.** The amendment as subamended was adopted.
- 301.** The Employer Vice-Chairperson withdrew the amendment to delete the word “generally” from Paragraph 10 as this had been done through the previous amendment.
- 302.** The amendment was withdrawn.
- 303.** Paragraph 10 was adopted as amended.

### ***Paragraph 11***

- 304.** The Worker Vice-Chairperson withdrew the amendment to replace the words “in the same way as” by the words “no less favourably than”.
- 305.** Paragraph 11 was adopted by the Committee.
- 306.** The Employer Vice-Chairperson sought clarification from the Office on the status of the Termination of Employment Convention, 1982 (No. 158). The formal status of Convention No. 158 was that it was fully in force and considered up to date and suitable for promotion but that a review of its status by an expert meeting was planned for later in 2010 or early 2011.

### ***Paragraph 12***

- 307.** Paragraph 12 was adopted without amendment.

### ***Paragraph 13***

- 308.** The Employer Vice-Chairperson introduced an amendment to Paragraph 13 to delete the words “to continue” to avoid ambiguity. The Government member of Kuwait supported the amendment of the Employers’ group.
- 309.** The Worker Vice-Chairperson rejected the amendment because the existing text clearly guaranteed continued employment with reasonable accommodation, as specified in the ILO code of practice on HIV/AIDS.
- 310.** The Government member of Chad proposed rewording the Paragraph by removing the wording “be allowed to” and replace it with “should continue to carry out.” The Government member of Niger supported this suggestion.
- 311.** The Government member of Algeria rejected the suggestion from the Government member of Chad and stated that the words “should be allowed” provided employers with a choice of whether or not to support continued employment for people living with HIV. Alternative wording should be used.

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- 312.** The Government member of France suggested replacing the words “should be allowed to work” with “should have the possibility of continuing to carry out their work.”. The Government member of Belgium supported this position. The Government members of Algeria and Chad, and the Employer Vice-Chairperson accepted this suggestion.
- 313.** The Worker Vice-Chairperson rejected the subamendment and explained that the word “should” was the most forceful option to protect the continued employment of people living with HIV. As a compromise, he proposed to introduce the words “should be enabled to continue.” The Government member of France agreed with this suggestion.
- 314.** The Government member of Kuwait responded that the word “enable” was weak and should not be used.
- 315.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, argued that the word “allow” suggested that the employer was in the position to decide whether or not the worker should continue to work, and this was not in the interest of the worker. She further argued that the words “be able to” implied a certain form of disability which should not be associated with persons living with HIV.
- 316.** The Government member of Spain proposed alternative wording for the Paragraph: “Persons with HIV-related illness should be provided with reasonable accommodation if necessary and continue to work as long as they are medically fit to do so.” The amendment was not seconded.
- 317.** The Employer Vice-Chairperson said that there was general agreement that workers with HIV should have the option to work as long as medically fit and should be provided with reasonable accommodation to do so.
- 318.** The Worker Vice-Chairperson highlighted the importance of including the word “possibility” in the subamendment to guarantee the option for continued employment. He proposed a new wording: “Persons with HIV-related illness should not be denied the possibility to continue to carry out their work, with reasonable accommodation if necessary, for as long as they are medically fit to do so.”
- 319.** The Employer Vice-Chairperson supported the subamendment and added that it should be given to the Committee Drafting Committee for further refining as the Committee agreed on the orientation but had encountered some difficulty in finding the correct wording. The Government member of France supported the Employers’ and Workers’ groups, as did the Government member of Ghana, on behalf of the Africa group Government members of the Committee.
- 320.** The amendment was adopted as subamended.
- 321.** Paragraph 13 was adopted as amended.

#### ***Paragraph 14***

- 322.** The Worker Vice-Chairperson proposed an amendment to replace the word “promoting” by the word “ensuring”, which his group considered would strengthen the document. Prevention was a general principle of the instrument and was a fundamental priority.
- 323.** The Employer Vice-Chairperson expressed his group’s concern about the change of emphasis the amendment would cause. The word “ensuring” suggested forcing workers to participate in the implementation of the instrument. While employers could ensure the effective confidentiality of personal data, including medical data, as provided for by

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clause (f), they could only promote, rather than ensure, the elements covered by clauses (a)–(e). His group could therefore not support the proposed amendment.

- 324.** The Government member of France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, said that his group could not support the proposed amendment and would prefer to consider the subsequent amendment to Paragraph 14, submitted by the Africa group Government members of the Committee, which went along similar lines.
- 325.** The Worker Vice-Chairperson withdrew his group’s proposed amendment in favour of the following amendment.
- 326.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, introduced an amendment which would insert the word “ensuring” at the beginning of clauses (a), (b) and (f); and the word “promoting” at the beginning of clauses (c), (d) and (e), in an attempt to strengthen the document where possible, but without forcing the implementation of certain measures.
- 327.** The Worker Vice-Chairperson expressed his group’s support for the proposed amendment.
- 328.** The Employer Vice-Chairperson wished to replace “ensuring” by “promoting” before clauses (a) and (b). If an enterprise “ensured” human rights, it must have the right to apply sanctions in the event that those rights were not respected. Confidentiality of personal data could be ensured, which was why his group could support the use of the word “ensuring” before clause (f). The word “promoting” should be used before clauses (a)–(e).
- 329.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, explained that if an employer ran a workplace in which human rights were not respected, the employer and the perpetrator of the violation would be held accountable. Where human rights have been violated, appropriate sanctions should be applied.
- 330.** The Worker Vice-Chairperson said that human rights were a combination of obligations and responsibilities. It was the role of those in positions of responsibility, such as governments at the national level, and employers at the enterprise level, to ensure that human rights were respected. In the workplace environment the obligation lay with employers to ensure that human rights were respected by applying appropriate sanctions in the event of a violation of those rights.
- 331.** The Government member of France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, indicated that his group preferred the amendment as originally submitted by the Africa group Government members of the Committee.
- 332.** The Employer Vice-Chairperson requested confirmation that the use of “ensuring” before “respect for human rights” carried with it the understanding that in the event of a violation of human rights in the workplace, employers would have the right to apply the appropriate sanctions, as necessary, and in accordance with national law.
- 333.** The Worker Vice-Chairperson said that company policies and contracts were premised on human rights. In an assault case, for example, the worker concerned could be dismissed by the employer. It was up to the employer to enforce these principles on the shop floor.



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334. The Employer Vice-Chairperson said that his group would withdraw its subamendment and accept the amendment as proposed by the Africa group Government members of the Committee on the understanding that employers with the obligation to ensure respect for human rights would have the right to apply sanction in their respective enterprises, in the event of a violation of human rights.
335. The amendment was adopted.
336. The Worker Vice-Chairperson proposed an amendment which would add at the end of clause 14(a), the words “and fundamental freedoms”.
337. The Employer Vice-Chairperson supported the amendment.
338. The Government member of France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, supported the amendment, as did the Government member of Ghana, on behalf of the Africa group Government members of the Committee, and the Government member of Uruguay, on behalf of the GRULAC group Government members of the Committee.
339. The amendment was adopted.
340. The Employer Vice-Chairperson withdrew an amendment which sought to replace clause 14(b) by the following: “gender equality, the empowerment of women, prevention and prohibition of violence and harassment.”.
341. The Government member of Spain, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, proposed an amendment to Paragraph 14(b) which would, after the word “women”, delete the words “, as well as measures to prevent and prohibit violence and harassment in the workplace;” and add a new clause after clause (b): “measures to prevent and prohibit violence and harassment in the workplace”. She explained that the purpose of the amendment was to ensure that the prevention and prohibition of violence and harassment in the workplace applied to all workers, not only in the context of gender equality and the empowerment of women.
342. The Employer and Worker Vice-Chairpersons supported the amendment.
343. The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, and the Government member of the Dominican Republic, on behalf of the GRULAC group Government members of the Committee, also supported the amendment.
344. The Worker Vice-Chairperson noted that the word “ensure” would precede the new clause after 14(b), in light of the previous amendment adopted.
345. The amendment was adopted.
346. The Committee adopted Paragraph 14 as amended.

## **Prevention**

### ***Paragraph 15***

347. The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, submitted an amendment to replace the words “as well as”

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by “;”. The amendment sought to make cultural, social and economic concerns of the same importance as gender issues.

- 348.** The Employer Vice-Chairperson supported the amendment, as did the Government member of Kuwait.
- 349.** The Worker Vice-Chairperson did not support the amendment, saying that gender needed to be actively promoted and placed at a higher level than the other concerns.
- 350.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, said that gender was often mainstreamed in cultural, social and economic concerns; in some cases culture might even be the overriding component. The proposed amendment gave gender the importance it deserved.
- 351.** The Worker Vice-Chairperson proposed a subamendment which would insert “equality” after “gender”.
- 352.** The Employer Vice-Chairperson did not support this subamendment, because “gender equality” was much more specific and more limited than “gender”. In certain national contexts some of the concerns listed might be more important than others.
- 353.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, agreed with the comments by the Employer Vice-Chairperson. He felt that the Workers’ group’s subamendment would narrow down what they wanted to do regarding gender. The amendment, as proposed, would be more encompassing. The amendment would also provide room for any given country to give a higher priority to whatever aspect they considered most important at a particular time.
- 354.** The Worker Vice-Chairperson withdrew his group’s subamendment and agreed to accept the amendment proposed by the Africa group Government members of the Committee.
- 355.** The amendment was adopted.
- 356.** The Committee adopted Paragraph 15 as amended.

### **Paragraph 16**

- 357.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, proposed to insert the word “workers” after the words “available to all” so as to ensure that the focus was not on the general population.
- 358.** The Employer Vice-Chairperson did not support the amendment since the clause dealt with the entire national context and the focus was wider than the worker or the workplace.
- 359.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, withdrew the amendment in light of the explanation by the Employers’ group.
- 360.** The Government member of the Netherlands, speaking on behalf of the Government members of Austria, the Czech Republic, Denmark, Poland, and the United Kingdom, proposed the insertion of the word “evidence-based” after the word “accurate,” in Paragraph 16(a). She stated that the development of policies should be based on evidence rather than perception.

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- 361.** The Worker Vice-Chairperson did not support the amendment which could impose limits on countries that did not have the benefit of advanced technology to test approaches. He preferred the existing text which was more enabling and relevant to all countries.
- 362.** The Employer Vice-Chairperson supported the amendment, but proposed a subamendment to read “evidence-informed”, a term more in line with the WHO approach. The Government member of the Netherlands supported the subamendment.
- 363.** The Worker Vice-Chairperson agreed with the subamendment of the Employers’ group.
- 364.** The Africa group Government members of the Committee did not support the amendments nor subamendment since the search for scientific evidence could result in delays in the implementation of HIV interventions. The original text would be more accommodating. The Government member of Argentina, speaking on behalf of the GRULAC group Government members of the Committee, as well as the Government members of Chad, Mali and Spain, also did not support the amendment, as subamended.
- 365.** The subamendment was supported by the Government members of France, Kuwait, Norway and the United States.
- 366.** The Government member of Nigeria explained that if HIV prevention interventions were disaggregated, they would include actions that were not always based on scientific evidence. The implementation of only prevention programmes with proven evidence would be time consuming and difficult and might not be in the best interest of workers. Instead, most prevention programmes were based on strong associations and not conclusive scientific criteria. He concluded that prevention programmes were extremely important and countries could not always afford to wait for scientific evidence before commencing with their prevention programmes. Nigeria did not support either the amendment or the subamendment.
- 367.** The Government member of the Bolivarian Republic of Venezuela warned against confusing the evaluation of programmes with the characteristics of information to be provided to workers. Prevention programmes dealt with attitudes, behaviours and lifestyles hence there was no need to be restrictive. The amendment and subamendment were not supported.
- 368.** The Worker Vice-Chairperson proposed a subamendment which sought to insert the word “precise” after the word “accurate” and before the words “up to date” in Paragraph 16(a).
- 369.** The Employer Vice-Chairperson observed that the notion of “evidence” would not mean that countries were required to carry out scientific verification. It simply meant that information made available should be based on scientific research.
- 370.** Noting the limited support for the amendment and related subamendments, the Government member of the Netherlands withdrew the amendment.
- 371.** The Government member of Spain, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, introduced an amendment which sought to, in the first line of Paragraph 16(a), after the word “available”, insert the words “and accessible”. She explained that there was the need to make sure that information provided was available and accessible.
- 372.** The Worker and Employer Vice-Chairpersons supported the amendment.

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- 373.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, supported the amendment, as did the Government member of Kuwait.
- 374.** The amendment was adopted.
- 375.** The Government member of the Dominican Republic speaking on behalf of the GRULAC group Government members of the Committee, introduced an amendment which sought to replace the words “and relevant” by the words “, relevant and timely” in Paragraph 16(a). She argued that the timeliness of the information was as important as the relevance of the information.
- 376.** The Worker and Employer Vice-Chairpersons supported the amendment.
- 377.** The Government member of Spain, speaking on behalf of Government members of the IMEC group and EU Member States Government members of the Committee supported the amendment.
- 378.** The amendment was adopted.
- 379.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, introduced an amendment to insert the words “all modes of” after the words “risk of” in Paragraph 16(b).
- 380.** The Worker and Employer Vice-Chairpersons expressed their groups’ support for the amendment. The Government member of France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, the Government member of Argentina, speaking on behalf of the GRULAC group Government members of the Committee, and the Government member of Jamaica, also expressed their support for the proposed amendment.
- 381.** The amendment was adopted.
- 382.** The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, introduced an amendment to make an editorial change to the Spanish version of the text, and to replace the words “behaviour change” by “changing risk behaviours related to infection”, since it was important to target specifically the types of behaviour that could increase the spread of the infection.
- 383.** The Employer Vice-Chairperson said that his group could not support the proposed amendment, since the words “behaviour change” would enable programmes to be designed according to how a particular jurisdiction deemed appropriate. He sought clarification as to how risk behaviours could be defined.
- 384.** The Government member of France, speaking on behalf of Government members of the IMEC group and EU Member States Government members of the Committee, said that the term behaviour change could have moral implications that had no place in the proposed Recommendation. Emphasis should be placed on the need to target behaviour that increased the risk of infection. His group therefore supported the proposed amendment, as did the Government members of Jamaica and Kuwait. The Worker Vice-Chairperson also expressed his group’s support for the amendment.

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- 385.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, said that his group did not support the amendment, since the term “risk behaviour” carried a connotation of stigma. The term “behaviour change” was internationally accepted language.
- 386.** The Employer Vice-Chairperson proposed a subamendment to delete the word “risk”.
- 387.** The Worker Vice-Chairperson said his group could not support that subamendment.
- 388.** The Government member of Brazil agreed with the Workers’ group. It was important to target specific behaviours that increased risk of infection, not broad behaviours associated with transmission of the disease. For instance, unprotected sex should be addressed, and not necessarily sexual activity in general.
- 389.** Noting that different interventions referred to “risk” and “risky” behaviours, the Committee referred the language choice to the Committee Drafting Committee.
- 390.** The Employer Vice-Chairperson withdrew the subamendment.
- 391.** The Chairperson noted that there was sufficient support among the members to adopt the amendment as introduced by the GRULAC group Government members of the Committee.
- 392.** The amendment was adopted.
- 393.** The Worker Vice-Chairperson said that the phrase “as soon as possible” should be deleted from the Paragraph as it might lead to coercion of people to take HIV tests. The Government member of Uganda, speaking on behalf of the Africa group Government Members of the Committee, and the Government member of Kuwait supported the amendment.
- 394.** The Employer Vice-Chairperson supported the amendment but noted that people who had engaged in risk behaviours should take HIV tests “as soon as possible.”
- 395.** The amendment was adopted.
- 396.** The Government member of the Bolivarian Republic of Venezuela, on behalf of the GRULAC group Government members of the Committee, had submitted an amendment to delete the words “through voluntary counselling and testing” after the words “as soon as possible.” The amendment was withdrawn because the deletion had already taken place.
- 397.** The Employer Vice-Chairperson submitted an amendment to insert the words “and as regularly” after the words “status as soon.” A person was not necessarily exposed to HIV just once in a lifetime, and a negative HIV test did not mean that someone was immune for life. Regular testing was an integral part of prevention.
- 398.** The Worker Vice-Chairperson felt that the phrase “and as regularly” could result in coercion, which would defeat the spirit of voluntary testing. The word “regularly” was very similar to “as soon as possible.” The Government member of Kuwait supported this position.
- 399.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, proposed a rewording: “measures to encourage workers to know their HIV status through VCT.”

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- 400.** The Employer Vice-Chairperson noted that the word “regularly” was only being introduced to highlight that regular testing was an essential part of prevention. Due to a lack of support, he withdrew the amendment, as a consequence of which the subamendment by the Africa group Government members of the Committee was not dealt with.
- 401.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, introduced an amendment to replace the words “such as” by the words “including but not limited to.”. This would make the provision more inclusive of other prevention supplies.
- 402.** The Worker Vice-Chairperson supported the amendment but alerted the Office to check the French translation. The Employer Vice-Chairperson supported the amendment as did the Government member of France, speaking on behalf the IMEC group Government members of the Committee and the EU Member States Government members of the Committee.
- 403.** The amendment was adopted.
- 404.** The Employer Vice-Chairperson proposed an amendment to insert the word “correct” after “about their”. This would emphasize the need for correct condom usage.
- 405.** The Worker Vice-Chairperson supported the amendment.
- 406.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee and the Government member of France, on behalf of the IMEC group and EU Member States Government members of the Committee, also supported the amendment.
- 407.** The amendment was adopted.
- 408.** The Employer Vice-Chairperson proposed an amendment to insert the words “their use” after “and risk”. This would highlight the fact that there was still a slight risk for HIV transmission even if condoms were used. The Government member of Kuwait agreed and noted that when prescribing medicine, doctors discussed risks with patients and the same should be done with condoms.
- 409.** The Worker Vice-Chairperson opposed the amendment stating that emphasizing risk would deter people from using condoms.
- 410.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, also did not support the amendment. The notion of risk was already covered by the phrase “correct use”. Using the phrase “and risk” would discourage people from using condoms. The Government member of France concurred noting that it would not be effective to send out contradictory messages on condom use to workers.
- 411.** Noting that the Committee recognized that there was still a risk when using condoms and that it may be counterproductive to be explicit, the Employer Vice-Chairperson withdrew the amendment.
- 412.** The Employer Vice-Chairperson withdrew the amendment to insert the words “prevention programmes” after the word “including” since the same words were already contained in the first line of Paragraph 16.

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- 413.** The Worker Vice-Chairperson proposed an amendment to insert after “at-risk groups”, the words “such as but not limited to people who inject drugs, sex workers and their clients, including all people regardless of their sexual orientation.” The UNAIDS Outcome Framework document identified these groups as key target groups for expanded action. If they were not specifically addressed, there would be a negative impact on the response. The Recommendation should facilitate the development of policies and programmes to address the groups that needed attention.
- 414.** The Employer Vice-Chairperson did not support the amendment. Specific identification of groups could lead to greater stigma. In Kenya, for example, married couples were identified as an “at-risk group” showing that the categories of risk groups were not universal and varied according to countries. The instrument should be broadly applicable.
- 415.** The Government members of Brazil, Kuwait, Uganda, on behalf of the Africa group Government members of the Committee, and the Bolivarian Republic of Venezuela, agreed with the Employers’ group and rejected the amendment.
- 416.** The Government member of Spain, speaking on behalf the IMEC group and EU Member States Government members of the Committee, proposed a subamendment after the words “at-risk groups”: “regardless of sexual orientation including but not limited to people who inject drug, sex workers and their clients.”
- 417.** The Worker Vice-Chairperson agreed with the proposed subamendment noting that it would ensure attention to vulnerable and neglected groups in the AIDS response. The Government member of the Netherlands supported the amendment.
- 418.** The Employer Vice-Chairperson did not support that position noting that the instrument should take into consideration that “at-risk groups” varied in different countries and changed over time. The Government members of Argentina and Chad and the Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, also did not support the amendment, stating that the original text was still preferable.
- 419.** The Government member of Spain, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, withdrew the subamendment.
- 420.** The Worker Vice-Chairperson withdrew the amendment, but stated that the denial of the realities of HIV, such as men who have sex with men and commercial sex work, would continue to fuel the expansion of the pandemic. Risk groups were universally present, and if their needs were not realistically addressed, efforts to contain the virus would fail.
- 421.** The Government member of Canada, speaking on behalf of the Government members of Australia, Austria, Canada, Finland and Japan introduced an amendment to insert the words “relevant to the workplace and consistent with WHO/UNAIDS/UNODC guidelines” after the words “harm reduction strategies”. Harm reduction strategies required specialized technical approaches and should draw on WHO/UNAIDS/UNODC guidelines. There was the need to include “relevant to the workplace” since typical harm reduction strategies should be adapted to workplaces.
- 422.** The Employer Vice-Chairperson introduced a subamendment, which sought to delete the words “and consistent with WHO/UNAIDS/UNODC guidelines,” noting that the source of guidelines should not be mentioned in the Recommendation.
- 423.** The Government member of Canada suggested that the word “guidance” could replace “guidelines”.

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424. The Employer Vice-Chairperson responded with a compromise to include “and other relevant guidelines” to the subamendment under discussion. The subamended text read: “harm reduction strategies relevant to the workplace and consistent with WHO/UNAIDS/UNODC guidelines and other relevant guidelines”.
425. The Worker Vice-Chairperson rejected the words “relevant to the workplace” because this was too restrictive and would reduce the scope of the proposed Recommendation to workers. The Government member of Côte d’Ivoire agreed and noted that under clause 16(a), the Committee did not restrict the programmes to workplaces. He argued that harm reduction strategies should take into account the fact that the Recommendation did not cover only workers.
426. The Government member of Uganda, on behalf of the Africa group Government members of the Committee, asked for clarification about the difference between “harm reduction strategies”, “risk reduction strategies” and “accident reduction strategies.” He continued by saying that the provision under discussion was irrelevant and the Africa group Government members of the Committee did not support any of the subamendments since they did not agree with the original amendment.
427. The Government member of France noted that the words “relevant to the workplace” should remain in the text and proposed the phrase “harm reduction strategies based on WHO/UNAIDS/UNODC and other relevant guidelines.” The Government member of Canada supported the subamendment introduced by France and argued that the text was broad enough, and workers should not worry about a narrowed focus.
428. The Employer and Worker Vice-Chairpersons and the Government members of Argentina, supported the subamendment by France.
429. The amendment was adopted as subamended.
430. Paragraph 16 was adopted as amended.

## **Treatment and care**

### ***Paragraph 17***

431. The Employer Vice-Chairperson introduced an amendment to insert the words “their national policies and programmes on” after the words “Members should ensure that”. He explained that the original text was ambiguous and the amendment sought to link the workplace response directly to national HIV policies and programmes.
432. The Worker Vice-Chairperson supported the amendment. The Government member of Algeria, the Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, and the Government member of Argentina, on behalf of the GRULAC group Government members of the Committee, also supported the amendment.
433. The amendment was adopted.
434. The Government member of Spain, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, introduced an amendment to replace the words “range of interventions possible” with the words “range of appropriate and effective interventions.” This would highlight the importance of selecting interventions that were effective in support of implementation of the Recommendation.



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435. The Employer and Worker Vice-Chairpersons, the Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, and the Government member of the Dominican Republic, speaking on behalf of the GRULAC group Government members of the Committee, supported the amendment.

436. The amendment was adopted.

437. Paragraph 17 was adopted as amended.

### **Paragraph 18**

438. The Worker Vice-Chairperson introduced an amendment to insert the words “as defined in the scope” after “All workers”. His group also requested subamending that amendment, to replace the word “defined” with “referred to”.

439. The Employer Vice-Chairperson said that by referring to all workers as stipulated to in the scope, the Paragraph would not include members of the armed forces and uniformed services. The amendment, as subamended, was restrictive.

440. The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, rejected the amendment and said that since the scope applied to the whole document, the amendment was therefore redundant.

441. The Worker Vice-Chairperson said that the phrase “all workers” was ambiguous, and since the section on definitions did not include all the categories of workers included in the scope, his group had wished to include a reference to the scope to ensure that the armed forces and other groups were covered.

442. The Employer Vice-Chairperson said that the term “all workers” was broader than “all workers as referred to in the scope.”. The Paragraph should therefore remain unchanged. The Government member of Kuwait agreed.

443. The Worker Vice-Chairperson proposed a further subamendment, to replace “as referred to in the scope” by “as covered by this Recommendation”, which was supported by the Employer Vice-Chairperson, the Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, and the Government member of Uruguay, speaking on behalf of the GRULAC group Government members of the Committee.

444. The Government member of Algeria rejected the proposed amendment as subamended, since it would mean that the words “including workers living with HIV” would have to be deleted later in the sentence because they were already included in the phrase “all workers”.

445. The Government member of France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, said that while his group understood the intention of the amendment as subamended, the wording would lead to a legal impasse. The Paragraph should be further subamended to read “all persons covered by the Recommendation”, rather than “all workers as referred to in the scope”.

446. The Employer and Worker Vice-Chairpersons expressed support for this proposal.

447. The amendment was adopted as subamended.

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448. The Worker Vice-Chairperson introduced an amendment to insert the words “and medical analysis” at the end of clause (a). He requested subamending that amendment to replace “analysis” by “interventions”, since medical interventions such as tests, scans and X-rays were costly and required support.
449. The Employer Vice-Chairperson said his group could not support the amendment, since the Paragraph was intended to cover entitlement to a broad range of medical services. Medical examinations were addressed in the Preamble. The Government member of Kuwait supported the position of the Employers’ group.
450. The Worker Vice-Chairperson withdrew the proposed amendment.
451. The Government member of Argentina, on behalf of the GRULAC group Government members of the Committee, introduced an amendment to replace the word “education” by the words “information and support”. The term education was appropriate for the formal education system. The meaning could also have a negative connotation, inappropriate for adult learning processes.
452. The Worker Vice-Chairperson proposed a subamendment to add “information and support” after “education” noting that education was still a core part of prevention. The Government member of Argentina, speaking on behalf of the GRULAC group Government members of the Committee, the Government member of Spain, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, and the Government member of Malawi, speaking on behalf of the Africa group Government members of the Committee, supported the subamendment proposed by the Workers’ group.
453. The amendment was adopted as subamended.
454. The Employer Vice-Chairperson proposed to replace clause 18(c) by “education on proper nutrition and healthy lifestyle;”. As the clause currently read, it suggested an obligation to provide proper nutrition, instead of “education” on nutrition.
455. The Worker Vice-Chairperson did not agree with the amendment. People needing proper nutrition should be provided with nourishment along with education. He proposed a subamendment to replace the clause with “proper nutrition consistent with treatment”.
456. The Employer Vice-Chairperson agreed. The Government member of Malawi, speaking on behalf of the Africa group Government members of the Committee, and the Government member of France, supported the proposal from the Workers’ group.
457. The amendment was adopted as subamended.
458. The Employer Vice-Chairperson withdrew an amendment to replace the word “persons” with the word “workers”. He recalled that the Committee Drafting Committee would examine the use of the terms “workers” and “persons” to ensure consistent usage.
459. Paragraph 18 was adopted as amended.

### **Paragraph 19**

460. The Employer Vice-Chairperson proposed to move Paragraph 19 to follow Paragraph 17. Moving the Paragraph would improve the logic and structure of the document.
461. The Worker Vice-Chairperson supported the amendment.

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- 462.** The Government member of Malawi, speaking on behalf of the Africa group Government members of the Committee, and the Government member of the Bolivarian Republic of Venezuela, on behalf of the GRULAC group Government members of the Committee, also supported the amendment.
- 463.** The amendment was adopted.
- 464.** The Employer Vice-Chairperson proposed an amendment to insert the words “public health,” after the words “this is provided under”. This was necessary because some country social security programmes did not include public health.
- 465.** The Worker Vice-Chairperson supported the amendment.
- 466.** The Government member of France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, and the Government member of Malawi, speaking on behalf of the Africa group Government members of the Committee, supported the amendment.
- 467.** The amendment was adopted.
- 468.** Paragraph 19 was adopted as amended.

### ***Paragraph 20***

- 469.** Paragraph 20 was adopted without amendment.

### **Support**

### ***Paragraphs 21 and 22***

- 470.** The Employer Vice-Chairperson withdrew an amendment to replace the word “persons” with the word “workers” in Paragraph 21, on the understanding that the matter would be considered by the Committee Drafting Committee.
- 471.** Paragraphs 21 and 22 were adopted without amendment.

### ***Paragraph 23***

- 472.** The Government member of Malawi, speaking on behalf of the Africa group Government members of the Committee, proposed to insert the word “alternative” after the word “promote” in the second line of the Paragraph. This would clarify the focus of income-generating opportunities.
- 473.** The Worker Vice-Chairperson suggested a subamendment to replace the word “alternative” with “different types of” as the meaning of the word alternative was not clear. The Government member of Brazil agreed, stating that the word “alternative” was not clear and weakened the concept of “income-generating opportunities”.
- 474.** The Employer Vice-Chairperson expressed confusion about the purpose of both the amendment and the subamendment. Placing “alternative” or “different types of” in the clause would not add clarity to the matter.
- 475.** The Worker Vice-Chairperson withdrew his subamendment.

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- 476.** The Employer Vice-Chairperson referred to Paragraph 334 from the Report of the Committee on HIV/AIDS at the 98th Session of the International Labour Conference (2009). The original intent of the Paragraph was to provide income-generating activities for people living with HIV who were unable to work. The issue was income, not alternative income.
- 477.** The Government member of Malawi, speaking on behalf of the Africa group Government members of the Committee, accepted this point and withdrew the amendment.
- 478.** The Government member of Canada, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, proposed the addition of the following text at the end of the Paragraph: “Flexible work arrangements should be encouraged to accommodate the episodic nature of HIV and AIDS as well as possible side effects of treatment. Members should consider extending support through periods of employment and unemployment.”. The intent of the amendment was to address the need for flexibility in transitioning in and out of work as a result of illness and maintaining access to benefits.
- 479.** The Worker Vice-Chairperson proposed a subamendment to replace the words “Flexible work arrangements should be encouraged” with “Work should be organized in such a way as”. The concept of “flexible work” had brought misery to workers as it was often used to circumvent rights and obligations.
- 480.** The Employer Vice-Chairperson recalled that Paragraph 21 had specifically addressed the issue of ways of arranging work, and Paragraph 23 seemed to repeat these principles. The issue of support contained in the amendment also was addressed elsewhere in the text. His group proposed a subamendment to reorder the content of the amendment for a better structured Paragraph as follows:
- Members should promote the retention in work and recruitment of persons living with HIV. Work should be organized in such a way as to accommodate the episodic nature of HIV and AIDS as well as possible side effects of treatment. Members should consider extending support through periods of employment and unemployment including, where necessary, income-generating opportunities for persons living with HIV or persons affected by HIV/AIDS.
- 481.** The Government member of Brazil shared his country’s experience in addressing the needs of persons with disabilities. Often, strategies to adapt work to the specific situation of workers had the effect of creating precarious employment. Brazil did not support the subamendment.
- 482.** The Government member of Canada, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, supported the subamendment proposed by the Employers’ group. The Government member of France acknowledged that flexible work arrangements had often caused problems for workers, but stated that the concept of flexibility in this context could also be viewed as a tool that would permit workers who could not work due to poor health to continue to work.
- 483.** The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, did not support the subamendment. She recommended that the issue of the episodic nature of work should be moved to Paragraph 21. The Employer Vice-Chairperson supported this suggestion.
- 484.** As Paragraph 21 had already been adopted, the Committee agreed to adopt the amendment, as subamended by the Employers’ group, taking into account the suggestion of the Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the

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GRULAC group Government members of the Committee. The matter would be referred to the Committee Drafting Committee for finalization.

485. Paragraph 23 was adopted as amended.

## **Testing, privacy and confidentiality**

### ***Paragraph 24***

486. The Worker Vice-Chairperson proposed an amendment to the subsection on “Testing, privacy and confidentiality”, to add a new Paragraph immediately before the existing Paragraph 24 to read: “Testing must be genuinely voluntary and free of any coercion and testing programmes must respect international guidelines on confidentiality, counselling and consent: (a) mandatory testing is prohibited; (b) testing that is coercive or discriminatory is prohibited; and (c) testing that does not provide for counselling and prevention information is prohibited.” The intention was to underscore the principle of voluntary testing and confidentiality.

487. The Employer Vice-Chairperson proposed that the amendment end at the word “consent” with the subsequent text deleted. Prohibitions of actions were not usual in this type of instrument. The Worker Vice-Chairperson agreed to the subamendment.

488. The Government member of Malawi, speaking on behalf of the Africa group Government members of the Committee, also supported the subamendment, as did the Government members of France and the United States.

489. The amendment was adopted as subamended.

490. Paragraph 24 was adopted as amended.

### ***Paragraph 25***

491. The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, proposed an amendment to insert the words “their tenure” after the words “access to jobs,”, noting that job security and stability were important elements for a worker.

492. The Employer Vice-Chairperson questioned the use of the term “tenure” since it was usually used in the context of public service.

493. The Worker Vice-Chairperson supported the amendment as it would strengthen the job security clause.

494. The Government member of Argentina emphasized the importance of keeping persons in a job and suggested that suitable language be found in English if the term “tenure” seemed inappropriate.

495. The Employer Vice-Chairperson supported the amendment. The Government member of Chad raised some concerns about the text in French.

496. The amendment was adopted, and referred to the Committee Drafting Committee for refinement.

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**497.** The Government member of France, speaking on behalf of Austria, the Czech Republic, Finland, France, Greece, Hungary, Poland and the United Kingdom, as well as Germany who had asked to join the sponsors, introduced an amendment, which the representative revised orally while submitting it, which sought to add, after Paragraph 25, the following new Paragraph:

Workers and job applicants should not be required to disclose HIV-related information about themselves or others, except in very exceptional and specific cases determined by reasons of occupational safety and health or the protection of the health of third parties as defined in national legislation that is established in consultation with employers' and workers' organizations. Access to such information should be governed by rules of confidentiality consistent with the ILO code of practice on protection of workers' personal data, 1997, and other relevant international data protection standards. Any testing carried out under this provision should be accompanied by counselling and conducted with informed consent.

**498.** The speaker acknowledged that this was a sensitive issue. He recalled that the amendment was not new: it had been discussed at the Committee on HIV/AIDS during the 98th Session of the International Labour Conference and was reflected as Point 29 in the Conclusions. Point 29 had deliberately been placed in brackets so that it could be rediscussed by the Committee at the present Session of the Conference. The Office however had taken a unilateral decision to remove the Paragraph from the proposed Recommendation and the point had therefore to be reintroduced as an amendment. He asked the Office to explain why it had done so. On the more substantive issue, he noted that while the instrument at hand was a Recommendation, it had to be drafted with the same legal rigour as a Convention. It was important to face the reality that in many countries there were exceptions to the prohibition of mandatory testing of HIV status, and the Recommendation should seek to regulate these exceptions with a view to eliminating them. By doing so, the principle of no mandatory testing was not in any way being weakened.

**499.** The representative of the Secretary-General explained that in drafting the text the Office had consulted with the WHO and UNAIDS on the issue and had done extensive research but had not found any international laws or guidelines that supported exceptions to the prohibition of mandatory testing. The WHO and UNAIDS were of the opinion that any mandatory testing was contrary to international human rights principles, and had informed the Committee directly of this in their introductory remarks. The Office had also taken into consideration its obligations as a co-sponsor of UNAIDS. The ILO code of practice on HIV/AIDS includes unqualified prohibitions on mandatory testing and disclosure of workers' personal data. Moreover, the majority of responses received from constituents on this point had not supported the bracketed text.

**500.** She continued to explain that the Office had implemented technical cooperation programmes for about ten years based on the principles of the ILO code of practice which supported VCT. Any language in an ILO document which supported mandatory testing would roll back the work of the ILO by ten years. The Office was very aware of the need to protect third parties and the ILO code of practice had provisions for universal precautions, better working conditions and improved occupational safety and health standards, which were useful in protecting third parties. For all these reasons, the Office text of the draft Recommendation had not taken up the bracketed text of Point 29 of the Committee's Conclusions of 2009.

**501.** A representative of the Office added that Report V(2A) explained why no text had been supplied by the Office on this point, and recalled that it had also made it clear that it remained "open for the Committee to rediscuss the issue on the basis of amendments ...".

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- 502.** The representative of the Legal Adviser referred the Committee to article 39, paragraphs 6 and 7, of the Standing Orders of the Conference, which stated that on the basis of the replies received to the questionnaire under the double-discussion procedure, and on the basis of the first discussion by the Conference, the Office might prepare one or more Conventions and Recommendations and communicate them to the Governments so as to reach them not later than two months from the closing of the session of the Conference, asking them to state within three months, after consulting the most representative organizations of employers and workers, whether they had any amendments to suggest or comments to make. On the basis of the replies received, the Office would draw up a final report containing the text of the draft Conventions or Recommendations with any necessary amendments. It was on that basis that the text of the proposed Recommendation had been drafted.
- 503.** The Worker Vice-Chairperson did not support the amendment. The Workers' group did not support mandatory testing in any form as it was a breach of privacy, human rights and the dignity of workers. Mandatory testing was against the rights of workers and gave the power to the party demanding testing. Mandatory testing gave the workers no opportunity to say "no" and confidentiality was not protected. Mandatory testing also violated the codes of medical doctors. A 2001 United Nations Security Council study on the implications of HIV/AIDS for UN peacekeeping operations had concluded that mandatory HIV testing for UN peacekeeping forces could not be justified. He recalled that the Deputy Executive Director of UNAIDS had emphasized, in her address to the Committee, that UNAIDS did not support mandatory testing for employment purposes but was committed to encouraging people to test with their informed consent. The amendment would go against the ILO code of practice which did not support mandatory testing. He concluded by saying that the amendment would be a breach of the ILO code of practice.
- 504.** The Employer Vice-Chairperson noted that the Committee was in a dilemma, torn between protecting people against mandatory disclosure of their HIV status and protecting third parties from transmission of HIV. The Committee was not in a position to decide which risk was greater. The member States would have to make this decision in relation to their own particular circumstances and it was therefore unnecessary to include mandatory testing and disclosure in the proposed Recommendation. For this reason the Employers' group did not support the amendment.
- 505.** The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, said that her group could not support the proposed amendment. The dilemma of mandatory testing was complex in respect of occupational safety and health. Third parties should be covered by universal precautions.
- 506.** The Government member of Malawi, speaking on behalf of the Africa group Government members of the Committee, said that while his group acknowledged the merits of the disclosure of HIV-related information in certain situations, they could not support the amendment, since mandatory testing and mandatory disclosure of HIV status could be subject to abuse. His group advocated the use of universal precautions.
- 507.** The Government member of Belgium said that her delegation could not support any amendment that would allow for mandatory testing under any circumstances, since the WHO and UNAIDS considered that there were no acceptable or desirable exceptions to the prohibition of mandatory testing. Moreover, a negative test result could be invalid a short time later, and was therefore of little practical value.

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**508.** The Government member of the United Kingdom drew attention to the UNAIDS/WHO policy statement on HIV testing, which had been published in June 2004, section 4 of which stated that UNAIDS/WHO did not support mandatory testing of individuals on public health grounds. Voluntary testing was more likely to result in behaviour change to avoid transmitting HIV to other individuals. Recognizing that many countries required HIV testing for immigration purposes on a mandatory basis and that some countries conducted mandatory testing for pre-recruitment and periodic medical assessment of military personnel for the purposes of establishing fitness, UNAIDS/WHO recommended that such testing be conducted only when accompanied by counselling for both HIV-positive and HIV-negative individuals and referral to medical and psychosocial services for those who received a positive test result. With that in mind, his delegation considered that the proposed Recommendation must reflect the existence of mandatory testing and disclosure of HIV status. He therefore proposed a subamendment, which would insert a new sentence, after the word “organizations”, to read “Steps should be taken, where compulsory disclosure of HIV status exists, to reduce with a view to eliminating such requirements, using authoritative scientific evidence to facilitate this process”.

**509.** The Worker Vice-Chairperson moved for closure in accordance with article 64 of the Standing Orders of the Conference on this particular amendment as there seemed to be little support for it.

**510.** The Government member of France said that the amendment had had two objectives: first, to foster a real discussion on the issue leading to an informed decision by the Conference. The debate had taken place, and the sponsors of the amendment respected the results thereof. The second objective had been to recognize that when there were exceptions to the principle of the prohibition of compulsory testing that could be judged legally necessary, those exceptions must be subject to a clear and protected confidentiality clause. Given the direction in which the Committee was leaning on the issue, the amendment was withdrawn.

**511.** As the amendment was withdrawn, the motion for closure was dropped.

**512.** Paragraph 25 was adopted as amended.

### ***Paragraph 26***

**513.** The Worker Vice-Chairperson proposed an amendment to insert the words “, countries of transition” (amended to “transit” after discussion) after the words “countries of origin”. This highlighted the importance of delivering HIV programmes to migrants at each stage of the migration process.

**514.** The Employer Vice-Chairperson supported the amendment.

**515.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, supported the amendment.

**516.** Paragraph 26 was adopted as amended.

### ***Paragraph 27***

**517.** The Worker Vice-Chairperson proposed an amendment to insert the words “by the countries of origin, countries of transition or countries of destination” after “migration”. The word “transition” should be changed to “transit” in line with the previous amendment.



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**518.** The Employer Vice-Chairperson supported the amendment as did the Government member of Ghana, on behalf of the Africa group Government members of the Committee.

**519.** The amendment was adopted.

**520.** Paragraph 27 was adopted as amended.

### ***Proposed new Paragraph after Paragraph 27***

**521.** The Worker Vice-Chairperson proposed adding a new Paragraph after Paragraph 27 as follows: “Members should have in place easily accessible dispute resolution procedures which ensure redress for workers if their rights set out above are violated, and dissuasive sanctions.” There should be measures in place to provide redress for migrant workers whose employment rights have been violated because of their HIV status.

**522.** The Employer Vice-Chairperson proposed a subamendment to delete the words “, and dissuasive sanctions” at the end of the sentence. The Workers’ group and the Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, supported this suggestion.

**523.** The Government member of France sought clarification from the Office on whether the use of the term “rights” in the text was correct or whether it should be replaced by “provisions.” A representative of the Office explained that the instrument did not define rights but referred to rights already established in existing ILO Conventions. The Government member of France supported the amendment as subamended.

**524.** The amendment was adopted as subamended.

**525.** Paragraph 27 was adopted as amended.

## **Occupational safety and health**

### ***Paragraph 28***

**526.** Paragraph 28 was adopted without amendment.

### ***Paragraph 29***

**527.** The Government member of the United States, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, proposed an amendment as follows: in the first line, after the word “measures”, insert the words “to prevent workers’ exposure to HIV” and after the word “precautions,” insert the words “organizational measures, use of engineering and work practice controls, personal protective equipment, when indicated, environmental control measures and”. He immediately subamended the text to replace “when indicated” with “as appropriate”, in recognition of the need to make personal protective equipment available in a broad range of situations.

**528.** The Worker Vice-Chairperson supported the subamendment but proposed including “and TB” after the word “HIV”.

**529.** The Government member of Argentina, noting that the text of the amendment was long, queried whether the terms used in the text such as “environmental control measures” were consistent with other ILO documents.

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- 530.** The Government member of Nigeria stated that the inclusion of “environmental controls” was appropriate since TB had been included through a subamendment from the Workers’ group. He also supported the insertion of the word “appropriate” in the revised clause proposed by the Workers’ group.
- 531.** The Government member of Finland, on behalf of the IMEC group and EU Member States Government members of the Committee, noted that that the inclusion of words such as “organizational measures, use of engineering and work practice controls, personal protective equipment, when indicated, environmental control measures and” were in accordance with international standards on occupational safety and health. In response to the Government member of Argentina, he said that environmental control measures include measures such as waste management and disinfectant procedures. He questioned the appropriateness of including TB, because TB was airborne and there was no post-exposure prophylaxis for it.
- 532.** The Government member of Argentina explained that environmental control measures were universal, but wondered whether all the measures listed were actually taking place in the health sector. He agreed that there were different approaches to addressing different diseases but was unsure as to whether the list of interventions in the amendment was necessary.
- 533.** The Government member of the United States replied that all the approaches mentioned in its amendment were standard and should be included in the amendment. The Government member of Nigeria supported this position.
- 534.** The Employer Vice-Chairperson argued that the subamendment was too complicated and said that the concept of universal precautions already included all necessary measures. Any attempt to list specific measures would narrow the scope of the document. Nevertheless, he expressed support for the amendment.
- 535.** The Government member of Ghana, on behalf of the Africa group Government members of the Committee, noted support for the subamendment, but argued that the sentence should be more concise. She proposed to replace the list of occupational health and safety responses proposed in the amendment with the phrase “accident and hazard control measures”. The Employer Vice-Chairperson and the Government member of the Bolivarian Republic of Venezuela supported this proposal.
- 536.** The Worker Vice-Chairperson did not support the proposal from the Africa group Government members of the Committee and suggested retaining the wording of the original amendment, “organizational measures, use of engineering and work practice controls, personal and protective equipment”. The Government member of Kuwait supported this position.
- 537.** The Government member of Côte d’Ivoire suggested replacing the list of measures with the words “universal precautions and all occupational safety and health measures”. The subamendment was not seconded.
- 538.** The Government member of France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, noted that although occupational safety was an ILO priority, it was one of the weakest elements of the proposed text. The amendment was intended to strengthen the document by specifying a number of actions to be taken by employers, workers and specialists to promote occupational safety and health related to HIV.

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- 539.** The Government member of the United States further added that the inclusion of a list of widely recognized effective measures would not preclude the use of other preventive measures such as those proposed by the Africa group Government members of the Committee.
- 540.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, proposed inserting a clause “preventive measures such as” after the words “accident and hazard control measures”, followed by the list of measures proposed by the Government member of France, on behalf of the IMEC group and EU Member States Government members of the Committee. The Paragraph would thus read: “Safety and health measures at work should include universal precautions, accident and hazard control measures and prevention measures such as organizational measures, use of engineering and work practice controls, personal protective equipment, as appropriate, environmental control measures and post-exposure prophylaxis, and other safety measures to minimize the risk of contracting HIV and TB, especially in occupations most at risk, including the health-care sector.”.
- 541.** The Government member of France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, supported the proposal from the Africa group Government members of the Committee.
- 542.** The Worker and Employer Vice-Chairpersons supported that subamendment.
- 543.** The amendment was adopted as subamended.
- 544.** The Worker Vice-Chairperson withdrew an amendment to insert the word “always” after “should” in the first line of Paragraph 29, on the basis of the previous discussion.
- 545.** Paragraph 29 was adopted as amended.

### **Paragraph 30**

- 546.** The Government member of France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, presented an amendment to replace Paragraph 30 with the following text: “Workers in occupations most at risk of exposure to HIV should receive education and training on routes of transmission and measures to prevent exposure and infection. Members should take measures to ensure that prevention, safety and health are guaranteed in accordance with relevant standards.”. He subamended the amendment to replace “routes” by “modes”. The focus should be on areas where there was greater risk of occupational exposure. The text should prevent any subjective judgement on the matter, which could take place if the phrase “real possibility of exposure” were retained.
- 547.** The Worker Vice-Chairperson supported the subamendment to include the phrase “modes of transmission” but requested broadening the focus to include any possibility of risk for workplace transmission rather than simply focusing on those “most at risk”. He proposed rephrasing the Paragraph as follows: “When there is a possibility of exposure to HIV at work, workers should receive education and training on modes of transmission and measures to prevent exposure and infection. Members should take measures to ensure that prevention, safety and health are guaranteed in accordance with relevant standards.”.
- 548.** The Employer Vice-Chairperson proposed a further subamendment. He suggested deleting “guaranteed” because it was already implied through the word “ensure” in the same sentence.

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**549.** The Worker Vice-Chairperson supported this subamendment along with the Government member of Ghana, on behalf of the Africa group Government members of the Committee, and the Government members of France and Kuwait.

**550.** The amendment was adopted as subamended.

**551.** An amendment proposing to delete the word “real” was withdrawn by the Africa group Government members of the Committee, as no longer being relevant after the adoption of the previous amendment.

**552.** Paragraph 30 was adopted as amended.

### ***Paragraphs 31 and 32***

**553.** Paragraphs 31 and 32 were adopted without amendment.

## **Children and young persons**

### ***Paragraph 33***

**554.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, presented an amendment to insert after the words “combat child labour” the words “and child trafficking”. Children could also be victims of trafficking.

**555.** The Employer and Worker Vice-Chairpersons supported the amendment along with the Government member of Spain, speaking on behalf of the IMEC group and EU Member States Government members of the Committee.

**556.** The amendment was adopted.

**557.** The Worker Vice-Chairperson proposed an amendment to delete the word “commercial” before “sexual exploitation.” Protection should cover all types of exploitation whether commercial or not.

**558.** The Employer Vice-Chairperson supported the amendment.

**559.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, and the Government member of Argentina, speaking on behalf of the GRULAC group Government members of the Committee, supported the amendment.

**560.** The amendment was adopted.

**561.** Paragraph 33 was adopted as amended.

### ***Paragraph 34***

**562.** Paragraph 34 was adopted without amendment.

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## V. Implementation

### *Paragraph 35*

#### Clause 35(a)

- 563.** The Government member of Spain, on behalf of the IMEC group and EU Member States Government members of the Committee, proposed the insertion in clause 35(a), after the words “and other parties concerned,” the words “including relevant occupational health structures,”.
- 564.** The Worker Vice-Chairperson, drawing on input from the Government member of Spain, proposed a subamendment to add the words “public and private” after the word “relevant”.
- 565.** The Government member of Ghana, on behalf of the Africa group Government members of the Committee, supported the subamendment, as did the Government member of the Bolivarian Republic of Venezuela, on behalf of the GRULAC group Government members of the Committee.
- 566.** The amendment was adopted as subamended.

#### Sub-clause (a)(ii)

- 567.** The Employer Vice-Chairperson proposed an amendment to add at the end of sub-clause (a)(ii), the words “, where applicable”. He recalled that the Committee had discussed the issue of collective bargaining in the first discussion. Since then, as a result of the current deliberations, the scope of the instrument had widened with respect to the definition of workers, workplace and categories of workers. In many economies, collective agreements would not always be appropriate for small and medium-sized enterprises and the proposed amendment would clarify their situation with respect to collective bargaining.
- 568.** The Worker Vice-Chairperson did not support the amendment. The existing text was broader in coverage and it would serve to encourage entities that did not have collective agreements, to work towards achieving them. If the wording were changed it would remove any incentive to work towards social dialogue and collective agreements. He noted that collective agreements could be reached outside a unionized environment; any agreement between workers and an employer at the shop floor level was a collective agreement of a kind.
- 569.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, did not support the amendment. The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, also opposed the amendment, noting that collective bargaining was an important instrument in labour relations. Moreover, clause (a) made it clear that collective agreements were but one means of implementing national policies and programmes on HIV/AIDS and the world of work. The Government members of France and Uruguay concurred with the view of the GRULAC group Government members of the Committee. The amendment could have a negative impact on the ILO’s universal message of social dialogue for all.
- 570.** The Employer Vice-Chairperson withdrew the amendment.

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Sub-clause (a)(iv)

- 571.** The Worker Vice-Chairperson proposed an amendment to add, at the end of sub-clause (a)(iv), the words “including those referred to in Section II. Scope”. He further proposed a subamendment to replace the word “workers” with “persons covered under this Recommendation”.
- 572.** The Employer Vice-Chairperson supported the amendment, as subamended, with the understanding that the Committee Drafting Committee would address the consistency of the text.
- 573.** The Government member of Ghana, on behalf of the Africa group Government members of the Committee, supported the subamendment.
- 574.** The amendment was adopted as subamended.

Clause 35(b)

- 575.** The Government member of France, on behalf of the IMEC group and EU Member States Government members of the Committee, proposed, in clause 35(b), to delete the word “labour” before the word “justice”. This would make the clause more applicable in countries that did not have a specific legal system and structure dedicated to labour.
- 576.** The Worker Vice-Chairperson did not support the amendment since most countries had structures that dealt with labour, such as labour inspectorates, and mediation and conciliation bodies that were not linked to the justice system. The original text was intended to capture that situation and was not intended to be linked to a particular system in a particular locality.
- 577.** The Employer Vice-Chairperson did not support the amendment, noting that the existing text had to be understood in a labour relations context, and if issues arose in the world of work, they would have to be referred to the proper institutions with jurisdiction over labour. His group would not want, for example, matters arising out of this Recommendation to end up before a criminal court. For that reason it was important to specify the labour-related aspects of the clause.
- 578.** The Government member of France, on behalf of the IMEC group and EU Member States Government members of the Committee, noted that all members of the Committee agreed that the clause applied to whatever jurisdictions governed labour matters. He noted that this amendment was introduced because there were a number of countries which did not have labour-specific judicial bodies and the aim was to cover such countries as well. He proposed a subamendment which sought to introduce the words “judicial authorities competent in labour issues” in place of “labour justice”.
- 579.** The Employer and Worker Vice-Chairpersons supported the subamendment, as did the Government member of Uruguay on behalf of the GRULAC group Government members of the Committee.
- 580.** The amendment was adopted as subamended and referred to the Committee Drafting Committee for further refinement.

Clause 35(d)

- 581.** The Government member of Spain, on behalf of the IMEC group and EU Member States Government members of the Committee, introduced an amendment which sought to insert

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the words, at the end of clause 35(d), “, including public and private insurance and benefit programmes”. She explained that the amendment was meant to broaden the scope of the instrument.

**582.** The Employer and Worker Vice-Chairpersons supported the amendment.

**583.** The Government member of Ghana, on behalf of the Africa group Government members of the Committee, explained that even though the intention was otherwise, the amendment would actually narrow the scope of the clause to only insurance and benefit programmes. She explained that the use of the word “services” would be broader and encompass many other areas. The Africa group Government members of the Committee did not support the amendment.

**584.** The Government member of Brazil, speaking on behalf of the GRULAC group Government members of the Committee, agreed with the intention behind the introduction of the amendment but proposed a subamendment so that the amendment would read “including public and private insurance and benefit programmes or other types of programmes”. The Employer and Worker Vice-Chairpersons supported this proposal.

**585.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, proposed a subamendment so that clause (d) would read “ensure collaboration and coordination among the public authorities and public and private services concerned, including insurance and benefit programmes or other types of programmes”. This proposal was supported by the Employer and Worker Vice-Chairpersons and the Government member of France.

**586.** The amendment as subamended was adopted.

#### Clause 35(e)

**587.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, introduced an amendment which sought to replace, in clause 35(e), the word “encourage” by the words “ensure that”, and at the end of the first line, delete the word “to”. She argued that the amendment sought to strengthen the Paragraph and make it consistent with the rest of the text.

**588.** The Worker Vice-Chairperson supported the amendment. He argued that the Recommendation should especially promote HIV programmes in export processing zones (EPZs) since they were not normally covered under the labour law regime. Since EPZs employed many vulnerable women, the stronger word “ensure” was needed.

**589.** The Employer Vice-Chairperson introduced a subamendment which would replace the word “ensure” with “promote”. In Paragraph 35 the word “promote” had generally been used but “ensure” was used when action was required by member States. The Employers’ group was very uncomfortable with the implication that sanctions could be raised against all enterprises with regard to implementing HIV programmes.

**590.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, stated that precisely because EPZs were often not covered by national labour laws, stronger language was needed to ensure that States could implement HIV programmes through enterprises.

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- 591.** The Employer Vice-Chairperson replied that EPZs were created by national law, and it was up to Governments to ensure that HIV was adequately addressed through the relevant legislation. Yet the clause was phrased so that potentially all enterprises would be subject to sanctions because of problems restricted to the EPZ sector.
- 592.** The Government member of Zambia noted that, because the instrument in question was a Recommendation, the word “ensure” would not have the same impact as in a Convention.
- 593.** The Worker Vice-Chairperson noted that, as far as the implementation of programmes was concerned, the document should not be vague. He argued that there was a need to ensure that workers in the EPZs were adequately covered and not left out. It was important not to weaken language in the proposed Recommendation since the workers in EPZs had not been adequately covered for a long time.
- 594.** After a brief break for consultations, the Employer Vice-Chairperson proposed a further subamendment according to which clause 35(e) would read: “promote and support all enterprises to implement the national policies and programmes, including through their supply chains and distribution networks with the participation of employers’ and workers’ organizations, and ensure that those operating in the export processing zones comply”.
- 595.** The Worker Vice-Chairperson expressed his group’s support for the subamendment.
- 596.** The amendment, as subamended, was adopted.
- 597.** The Employer Vice-Chairperson introduced an amendment to add the words “in collaboration with workers,” after the words “all enterprises,” in clause 35(e). He withdrew the second part of the amendment, which would have inserted the words “the most representative” after the words “with the participation of”.
- 598.** The Worker Vice-Chairperson expressed his group’s support for the amendment. The Government member of France, speaking on behalf of the IMEC group and the EU Member States Government members of the Committee, and the Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, also expressed their groups’ support for the proposal.
- 599.** The amendment was adopted as subamended.

#### Clause 35(f)

- 600.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, introduced an amendment to 35(f) to replace the words “such as” by the word “, including”, since it would make the text more inclusive.
- 601.** The Employer and Worker Vice-Chairpersons expressed their groups’ support for the proposed amendment.
- 602.** The Government member of Spain, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, proposed a subamendment to add, after “including organizations representing persons living with HIV”, the words “/AIDS, international organizations, relevant NGOs and country coordinating mechanisms”, with a view to broadening the scope of the text.
- 603.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, wished to subamend the proposal further by replacing “NGOs” by “civil society organizations”.



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- 604.** The Employer Vice-Chairperson recalled that the clause began with the notion of social dialogue, which normally involved only the tripartite partners. The reference to social dialogue should therefore be deleted if this subamendment were adopted, since the involvement of the other parties listed would dilute the concept of social dialogue.
- 605.** The Worker Vice-Chairperson said that social dialogue was not in fact restricted to tripartite dialogue only, especially at the national level. A separate reference to tripartite dialogue could be made in order to address the concerns of the Employers' group.
- 606.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, pointed out that clause (f) provided for "taking into account" the views of other groups, not directly involving them in social dialogue consultations. This view was shared by the Government member of France, on behalf of the IMEC group and EU Member States Government members of the Committee. The Government members of Chad and Kuwait also said that the reference to social dialogue was important and should be maintained.
- 607.** The Employer Vice-Chairperson said his group could support the subamendment, without the deletion of "social dialogue".
- 608.** The Worker Vice-Chairperson wished to submit a further subamendment, to add "consistent with Convention No. 144", after "negotiation".
- 609.** The Employer Vice-Chairperson expressed his group's support for the proposal, but requested that the Committee Drafting Committee refine the wording. The Government member of France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, held the same view.
- 610.** The amendment was adopted as subamended.

#### Clause 35(i)

- 611.** The Employer Vice-Chairperson presented an amendment to clause 35(i), which would replace the clause by: "be implemented by Members and ensure reasonable provision for their means of implementation, with due regard to current national conditions, as well as capacity of employers and workers.". The amendment sought to address the question of the capacity of the social partners, especially of small and medium-sized enterprises. The Worker Vice-Chairperson supported the amendment.
- 612.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, wanted clarity on the amendment. She believed "provision" went beyond financing and could include capacity building and other measures.
- 613.** The Government member of France shared the same perspective as the Africa group Government members of the Committee. He asked what it meant for Governments to take into account the capacity of employers and workers.
- 614.** The Employer Vice-Chairperson explained that the term "taking into consideration" was inclusive. The idea was to understand the capacity of employers and workers. It was not aimed at large companies, but rather at small and medium-sized enterprises, which were important considering that "all types" of workplaces would be covered by the Recommendation.
- 615.** The Worker Vice-Chairperson proposed a subamendment to insert the word "build" before "capacity of employers and workers".

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- 616.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, suggested that the original language of the first half of the clause would better address the concerns of the Employers' group.
- 617.** The Employer Vice-Chairperson noted the suggestion of the Africa group Government members of the Committee. He recalled that, at the previous year's Committee on HIV/AIDS, the Workers' group had asked for a reference to resources needed to implement national programmes. The idea was to consider the capacity of small and medium-sized enterprises in implementing a national programme so that adequate resources could be provided, if necessary. He proposed a subamendment so that the proposed amendment would read "ensure that Members make reasonable provision for the means of their implementation, with due regard to national conditions as well as capacity of employers and workers".
- 618.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, supported the subamendment. The Worker Vice-Chairperson withdrew his subamendment and supported the Employers' subamendment.
- 619.** The amendment was adopted as subamended.
- 620.** Paragraph 35 was adopted as amended.

## **Social dialogue**

### ***Paragraph 36***

- 621.** The Government member of the Dominican Republic, speaking on behalf of the GRULAC group Government members of the Committee, introduced an amendment to Paragraph 36 which sought to, before the word "workplace", replace the word "their" by "the". She noted that the word "their" would restrict the Paragraph to the specific workplaces where people living with HIV worked. The word "the" would make the application broader.
- 622.** The Employers Vice-Chairperson said that the original intention of the Paragraph was to provide for consultation with people living with HIV at their own workplace. He opposed the amendment because it would open up consultations beyond the workplace.
- 623.** The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, preferred not to limit the participation of people living with HIV to their workplaces. Including only persons from a specific workplace might violate confidentiality.
- 624.** The Worker Vice-Chairperson did not support the amendment. The dialogue described in the draft Paragraph related to social dialogue at the shop floor level, which should be limited to the workplace. The Employer Vice-Chairperson also did not support the amendment.
- 625.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, did not support the amendment. The amendment was withdrawn.
- 626.** Paragraph 36 was adopted.

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### **Paragraph 37**

627. Paragraph 37 was adopted without amendment.

## **Education, training, information and consultation**

### **Paragraph 38**

628. The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, withdrew an amendment to insert the words “including trainees” after the words “vocational training”.

629. The amendment was withdrawn.

630. The Employer Vice-Chairperson proposed to replace the words “persons in vocational training” with the words “persons in training, including interns and apprentices”. This would create consistency with the revised scope of the Recommendation.

631. The Worker Vice-Chairperson and the Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, supported the amendment.

632. The amendment was adopted.

633. Paragraph 38 was adopted as amended.

### **Paragraph 39**

634. Paragraph 39 was adopted without amendment.

### **Paragraph 40**

635. The Government member of France, speaking on behalf of the IMEC group and the EU Member States Government members of the Committee, submitted a two-part amendment to Paragraph 40, to insert the words “awareness-raising information and appropriate” after the words “all workers should receive” and to replace the words “who may come into contact with” by “whose occupation puts them at risk of exposure to”. The intention of the first part of the amendment was to specify the importance of awareness raising and information as an essential part of training. The second part was to clarify the link between occupational risk and potential exposure to HIV.

636. The Employer Vice-Chairperson supported the amendment.

637. The Worker Vice-Chairperson proposed a subamendment to insert the words “including interns, trainees and volunteers” after the word “workers”. This would clarify that people who may not be considered workers as defined in the Recommendation, would still receive training on occupational risks related to HIV.

638. The Employer Vice-Chairperson, the Government member of France, speaking on behalf of the IMEC group and the EU Member States Government members of the Committee, and the Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, supported the subamendment.

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639. The amendment was adopted as subamended.

640. Paragraph 40 was adopted as amended.

### **Paragraph 41**

641. The Employer Vice-Chairperson proposed inserting the word “workplace” after the word “implement” to clarify the context where policies and programmes would be carried out.

642. The Worker Vice-Chairperson supported the amendment as did the Government member of Spain, speaking on behalf of the IMEC group and the EU Member States Government members of the Committee.

643. The amendment was adopted.

644. The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, proposed to replace the words “HIV/AIDS and to” with “HIV/AIDS. Workers’ and Employers’ representatives should”. This would clarify that both employers and workers should participate in any workplace inspections linked to HIV/AIDS policy and programmes at the national level.

645. The Employer and Worker Vice-Chairpersons and the Government member of France, speaking on behalf of the IMEC group and the EU Member States Government members of the Committee, supported the amendment. The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, also supported the amendment but noted that standard ILO language, as specified in relevant Conventions, should be applied to the text.

646. The amendment was adopted.

647. Paragraph 41 was adopted as amended.

## **Public services**

### **Paragraph 42**

648. The Government member of France, speaking on behalf of the IMEC group and the EU Member States Government members of the Committee, subamended their groups’ original submission, which was to delete the word “labour” before the words “justice system”. In the subamendment, the words “justice system” should be replaced with “judicial authorities competent in labour matters”. This would bring the text in line with an earlier amendment.

649. The Employer Vice-Chairperson supported the subamendment.

650. The Worker Vice-Chairperson pointed out that the subamendment should be further modified to reflect the language which the Committee had previously agreed. The subamended text should read: “judicial authorities competent in labour issues”, replacing the word “matters” with the word “issues”.

651. The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, supported the subamendment.

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652. The amendment was adopted as subamended.

653. Paragraph 42 was adopted as amended.

### ***Paragraph 43***

654. Paragraph 43 was adopted without amendment.

## **International cooperation**

### ***Paragraph 44***

655. The Government member of Argentina, speaking on behalf of the GRULAC group Government members of the Committee, withdrew an amendment concerning the translation of the Spanish text.

656. The Government member of France, speaking on behalf of the IMEC group and the EU Member States Government members of the Committee, proposed to insert the words “through their participation in the multilateral system” after the words “multilateral agreements,” to define better the sphere within which these agreements would be implemented.

657. The Worker Vice-Chairperson supported the amendment.

658. The Employer Vice-Chairperson supported the amendment but asked that the Committee Drafting Committee refine the language to recognize that there were many levels of collaboration below the multilateral level.

659. The amendment was adopted with the understanding that the Committee Drafting Committee would refine the language.

660. Paragraph 44 was adopted as amended.

### ***Paragraph 45***

661. The Government member of Argentina, speaking on behalf of the GRULAC group Government members of the Committee, withdrew an amendment regarding translation.

662. The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, proposed an amendment to replace the words “taken both by countries of origin and by countries of” by the words “taken by countries of origin, transit and.” HIV/AIDS programmes for migrant workers should cover transit countries in addition to sending and receiving countries.

663. The Employer and Worker Vice-Chairpersons supported the amendment.

664. The amendment was adopted.

665. The Worker Vice-Chairperson withdrew an amendment to delete the word “both” and insert the words “transition countries” before the words “country of origin,” as this issue was addressed in the previous amendment.

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666. Paragraph 45 was adopted as amended.

### **Paragraph 46**

667. The Government member of Spain, speaking on behalf of the IMEC group and the EU Member States Government members of the Committee, proposed to insert the words “national structures on HIV and AIDS” after the words “between and among members” since mechanisms on HIV/AIDS had a key role in shaping effective international cooperation.

668. The Worker Vice-Chairperson introduced a subamendment to reword the phrase to “among Members and their national structures on HIV/AIDS and relevant organizations” to show that national structures were subordinate to and part of member States.

669. The Employer Vice-Chairperson supported the subamendment.

670. The Government member of Uganda, speaking on behalf of the Africa group Government member of the Committee, introduced a subamendment to delete the word “and” and replace it with a comma.

671. The Employer and Worker Vice-Chairpersons and the Government member of Spain, speaking on behalf of the IMEC group and the EU Member States Government members of the Committee, supported the subamendment from the Africa group Government members of the Committee.

672. The amendment was adopted as subamended.

673. Paragraph 46 was adopted as amended.

### **Proposed new Paragraphs after Paragraph 46**

674. The Worker Vice-Chairperson introduced an amendment to add a new Paragraph after Paragraph 46, which would read: “In developing strategies and programmes for HIV prevention, treatment, care and support, particular attention should be given to coordination and resources required, especially to meet the needs of high prevalence countries.”. The amendment did not seek to create competition between countries with low and high prevalence but rather to ensure that sufficient attention was given to addressing the pandemic in high prevalence countries.

675. The Employer Vice-Chairperson expressed concern regarding the reference to strategies and programmes for HIV prevention, since they had already been covered in the section of the Recommendation on national policies and strategies. The amendment also implied that national strategies should be developed at the international level.

676. The Worker Vice-Chairperson said that it was important to address HIV at both the national and international levels. International cooperation included the provision of resources, which should address the needs of higher HIV prevalence areas. While interventions were carried out at the national level, resource mobilization should be conducted at the international level.

677. The Employer Vice-Chairperson suggested adding the word “international” before the words “strategies and programmes”. This would clarify that the resource mobilization addressed in this Paragraph would take place at the international level.

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- 678.** The Government member of France, speaking on behalf of the IMEC group and the EU Member States Government members of the Committee, and the Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, supported the subamendment of the Employers' group.
- 679.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, proposed a subamendment that would revise the Paragraph to read: "In the spirit of international cooperation and partnership in mobilizing resources for national strategies and programmes for HIV prevention, treatment, care and support, particular attention should be given to coordination with a view to minimizing costs and meeting the needs of all countries.". Resource mobilization should be conducted at the international level, and it should address the needs of all countries regardless of prevalence.
- 680.** The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, pointed out that apart from the reduction of costs, the other elements in the subamendment submitted by the Africa group Government members of the Committee were already included in Paragraph 46. The text should be revised to read, "Multilateral organizations should give particular attention to the coordination and to the necessary resources to satisfy the needs of high HIV prevalence countries in the development of international strategies and programmes for HIV prevention, treatment, care and support related to HIV.".
- 681.** The Employer Vice-Chairperson expressed concern about the emphasis being placed on areas with high HIV prevalence. Not all countries with high prevalence were lacking resources, and the Paragraph should state that resources should be made available where they were needed most.
- 682.** The Worker Vice-Chairperson and the Government member of France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, supported the subamendment.
- 683.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, said that strategies and programmes should be tailored to individual countries. The wording of the GRULAC group Government members of the Committee proposal implied that high HIV prevalence countries should develop international strategies for resource mobilization.
- 684.** The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, pointed out that the proposed subamendment stated that multilateral organizations should adapt their strategies to focus on higher HIV prevalence countries, not that those countries should develop international strategies.
- 685.** The Employer Vice-Chairperson proposed a further subamendment, which would read, "Members and multilateral organizations should give particular attention to the coordination and to the necessary resources to satisfy the needs of all countries, especially high prevalence countries, in the development of international strategies and programmes for HIV prevention, treatment care, and support related to HIV.". The wording could be refined by the Committee Drafting Committee. The onus to develop strategies to mobilize resources for HIV programmes should be on member States and international organizations.

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- 686.** The Worker Vice-Chairperson expressed his group's support for the subamendment proposed by the Employers' group. The Government members of Chad, France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, Uganda, speaking on behalf of the Africa group Government members of the Committee, and the Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, also expressed support for the amendment as subamended by the Employers' group.
- 687.** The amendment was adopted as subamended.
- 688.** The proposed new Paragraph after Paragraph 46 was adopted as amended.
- 689.** The Government member of Brazil, speaking on behalf of the GRULAC group Government members of the Committee, presented an amendment to add a new Paragraph to highlight the importance of efforts to reduce costs of prevention and care supplies to support the coverage and impact of HIV/AIDS programmes at the national level. The proposed amendment read as follows: "In the context of international cooperation, the reduction of costs of supplies of any type for the prevention or treatment of infection caused by HIV and other opportunistic infections should be encouraged."
- 690.** The Worker Vice-Chairperson proposed to subamend the text as follows: "Members and the international community should seek to reduce the price of supplies or any measures for the prevention, treatment and care of infection caused by HIV and other opportunistic infections". This would highlight the broad range of supplies needed for a comprehensive HIV/AIDS response.
- 691.** The Employer Vice-Chairperson accepted the subamendment but asked whether the Paragraph should go beyond supplies to costs for intervention. Efficiency of programme management and implementation should be improved.
- 692.** The Government member of France, speaking on behalf of the IMEC group and the EU Member States Government members of the Committee, suggested replacing the "international community" with "international organizations".
- 693.** The Worker Vice-Chairperson accepted the phrase "international organizations".
- 694.** The Government member of Argentina, speaking on behalf of the GRULAC group Government members of the Committee, clarified that "supplies" in Spanish (*insumos*) went beyond condoms and other such supplies to include goods for both prevention and treatment.
- 695.** The Government member of Uganda, speaking on behalf of the Africa group Government members of the Committee, proposed to include "and HIV-related cancers" after "opportunistic infections". The Worker and Employer Vice-Chairpersons and the Government member of Brazil, speaking on behalf of the GRULAC group Government members of the Committee, supported the proposal of the Africa group Government members of the Committee.
- 696.** The amendment was adopted as subamended.
- 697.** The proposed new Paragraph after Paragraph 46 was adopted as amended.



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## Follow-up

### **Paragraph 47**

698. Paragraph 47 was adopted without amendment.

### **Paragraph 48**

699. The Government member of Argentina, speaking on behalf of the GRULAC group Government members of the Committee, introduced an amendment which sought, after the words “necessary”, to delete the words “and, where possible and useful,”, and after the words “on the basis of” add the words “consultations with organizations of people living with HIV,”. He argued that the amendment sought to introduce an element of consultation with organizations of people living with HIV and AIDS.

700. The Employer Vice-Chairperson appreciated the idea behind the amendment but the wording suggested that such groups should be part of the tripartite consultation process. He could not support the amendment as it stood.

701. The Worker Vice-Chairperson agreed to the removal of the words “and, where possible and useful,”. With regard to consultations with organizations of people living with HIV and AIDS, he agreed with the sentiments expressed by the Employers’ group and introduced a subamendment which sought to replace the words “consultation with” with the words “views should be sought of”.

702. The Government member of Argentina, speaking on behalf of the GRULAC group Government members of the Committee, agreed with this proposal.

703. The Employer Vice-Chairperson introduced a subamendment to replace the Workers’ group subamendment by “taking into consideration the views of people living with HIV and AIDS, expert reports or technical studies”.

704. The Worker Vice-Chairperson supported this wording, as did the Government members of France and Kuwait.

705. The amendment was adopted as subamended.

706. Paragraph 48 was adopted as amended.

### **Paragraph 49**

707. The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, withdrew an amendment which sought to delete the words “to the extent possible”.

708. The Government member of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, introduced an amendment which sought, after the word “women”, to add the words “by age and occupation,”. She argued that it was important to track these dimensions, since young people and children were especially vulnerable to HIV, and certain occupations had a higher risk of HIV transmission.

709. The Worker Vice-Chairperson supported the amendment.

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- 710.** The Employer Vice-Chairperson reminded the Committee that during the discussions last year, efforts had been made to focus on gender issues, and as a result “men and women” had been added to the text. By adding “age and occupation”, it limited the “other relevant factors” which could be examined, such as culture and geographical location. The Employers’ group did not support the amendment.
- 711.** The Government member of Kuwait agreed and noted that if “age” and “occupation” were introduced into the text, other considerations would also have to be introduced. She did not support the amendment.
- 712.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, introduced a subamendment which inserted the word “detailed” before the word “information” and also removed the words “age and occupation”. She explained that this subamendment was aimed at encouraging more detailed collection of information without specifically listing any variables.
- 713.** The Employer and Worker Vice-Chairpersons supported the subamendment from the Africa group Government members of the Committee.
- 714.** The Government member of France asked the GRULAC group Government members of the Committee to further explain their amendment. He argued that many countries did not have disaggregated statistics by occupation for HIV, and the confidentiality associated with HIV data made the generation of such information even more difficult.
- 715.** The Government member of Venezuela, speaking on behalf of the GRULAC group Government members of the Committee, explained that their intention was not to introduce new requirements for national statistics in member States. The amendment targeted research, such as in the area of occupational safety and health.
- 716.** The amendment was adopted as subamended.
- 717.** Paragraph 49 was adopted as amended.

### **Paragraph 50**

- 718.** The Government member of Spain, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, introduced an amendment that would add, at the beginning of the Paragraph, the words: “In addition to the reporting under article 19 of the Constitution of the International Labour Organization,” and, after the word “Recommendation”, replace the word “should” by the word “could”. She said a distinction should be made between obligatory reporting and voluntary reporting.
- 719.** The Worker Vice-Chairperson said that while his group supported the first part of the amendment, referring to article 19 of the Constitution, it did not support the replacement of “should” by “could”, since that would weaken the Recommendation.
- 720.** The Government member of France, speaking on behalf of the IMEC group and EU Member States Governments of the Committee, said that the proposed amendment had not been intended to weaken the text. From a legal perspective, however, the Committee could not dictate the content of reports to UNAIDS. The amendment intended to solve that issue.
- 721.** The Employer Vice-Chairperson pointed out that when Paragraph 50 had been drafted in 2009, the question of whether the instrument would be a Recommendation or a Convention had not been answered, and the reporting requirements had therefore not been set. The UNAIDS reporting mechanism had been chosen, since it covered both eventualities.

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However, since that time a decision had been taken to the effect that the instrument would be a Recommendation. The amendment, as proposed, referred to the reporting mechanisms for Recommendations under Article 19 of the Constitution. With that in mind, reporting to UNAIDS had become an optional procedure. The word “should” should therefore be replaced by the word “could”. His group supported the proposed amendment.

722. The Worker Vice-Chairperson said that in light of the explanation given by the Employers’ group, and on the understanding that “could” refers clearly to UNAIDS, his group would also support the amendment in full.
723. The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, also expressed her group’s support for the amendment.
724. The amendment was adopted.
725. The Worker Vice-Chairperson withdrew an amendment which would have added after Paragraph 50 a new Paragraph to read: “Members should make a report on action taken on the basis of this Recommendation and provide this to the Director-General at regular three-year intervals.”
726. The Worker Vice-Chairperson withdrew an amendment which would have added after Paragraph 50 a new paragraph to read: “Members should comply with a reporting mechanism to review progress and monitor developments in relation to the implementation of the national policies and programmes on HIV/AIDS and the world of work as outlined in Paragraph 35 of the Recommendation.”
727. Paragraph 50 was adopted as amended.

## **Consideration of a resolution concerning the promotion and the implementation of the Recommendation on HIV and AIDS and the world of work, 2010**

728. After a brief suspension of the meeting, the Worker Vice-Chairperson introduced an amendment that contained the text of a resolution concerning the promotion and the implementation of the Recommendation on HIV and AIDS and the world of work, 2010. The text had been subamended in consultation with the Employers’ group.
729. He recalled that in the 2009 discussion of the draft instrument, the Workers’ group had called for a Convention. His group was now comfortable with a Recommendation due to the recognition by the Committee that the instrument would require serious commitment and follow-up. The proposed resolution provided for clear follow-up actions by the Organization and its Members.
730. As the subamended text was lengthy, the Committee agreed to discuss it paragraph by paragraph as it appeared in English on the screen in front of the meeting room, with interpretation into the other working languages.
731. The Chairperson invited general remarks on the proposed resolution.
732. The Employer Vice-Chairperson in general supported the resolution which he felt generally met the concerns of his group. The draft Recommendation needed an action plan and a way to measure milestones. The resolution began to address monitoring and

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evaluation needs. It would allow the Governing Body to set up mechanisms that would not be onerous. He added that a Recommendation would be more elegant and would provide quicker action than a Convention. The approach would also pick up on work done by member States in implementing the ILO code of practice.

**733.** The Government member of France, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, noted that there was strong agreement in the Committee for the need to ensure implementation. He welcomed the initiative, as it allowed for direct action on the part of the Governing Body.

**734.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, expressed general support for the draft resolution. She noted all the work that had been carried out over the past two years, and that it had yielded a fruitful discussion and a rich draft Recommendation. The draft resolution required more commitment from the ILO, the member States and the social partners to work together and reduce the problem of HIV and to protect workforces. She considered the draft resolution a step in the right direction that would push the agenda forward and make sure that the Recommendation would not just sit on the shelf.

## **Title and preamble**

**735.** No changes were proposed to the title and the preamble.

## **Paragraph 1**

**736.** The Government member of France sought clarification from the Office as to whether it was appropriate for the text to ask the Governing Body to make a request of the Director-General since the Governing Body could undertake actions directly. In response, the representative of the Legal Adviser advised that the reference to the Director-General could be deleted since it was not necessary in this case.

**737.** The Government member of Nigeria noted that the Recommendation had been derived from the ILO code of practice, and suggested a subamendment that would reflect the need to bring the code in alignment with the new Recommendation.

**738.** The Employer Vice-Chairperson did not support this subamendment, noting that the Recommendation was in itself an update of the code, and made numerous references to the code in its text.

**739.** The Worker Vice-Chairperson supported the view of the Employers' group, stressing that the Recommendation was a revision of the code. The sole purpose of the resolution was to ensure an effective implementation and reporting process for the Recommendation.

**740.** The Government member of Brazil preferred the use of the word "suggests" or "recommends" rather than "invites" which was usually used for relation with UN Organizations and other bodies outside the Organization. The representative of the Legal Adviser advised that the term "invites" was appropriate.

**741.** The Government member of Spain, on behalf of the IMEC group and EU Member States Government members of the Committee suggested the replacement of the words "for effective implementation by" with the words "to give effect to".

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742. The Government member of Brazil suggested that the first paragraph should make reference to HIV and AIDS and the world of work since that was the subject matter of the current discussion.
743. The Government member of France, on behalf of the IMEC group and EU Member States Government members of the Committee, disagreed with the subamendment proposed by Brazil since the matter was covered in the title of the resolution. The term “invites the Governing Body” should be retained.
744. At the end of the discussions, paragraph 1 of the resolution read: “Invites the Governing Body of the International Labour Office to allocate the resources within the existing budget and look for additional extra-budgetary resources to carry out the work with the tripartite constituents to give effect to the Recommendation”.
745. Paragraph 1 was adopted as amended.

## **Paragraph 2**

746. The Government member of France, on behalf of the IMEC group and EU Member States Government members of the Committee expressed concern about the procedure, pointing out that the Committee was trying to settle legal matters when it should have been addressing the intent of the text. He proposed a subamendment of the text by removing the word “further” wherever it appeared.
747. The Government member of Chad indicated that he was lost and felt sidelined regarding the discussions as a result of the absence of the text in languages other than English. The Chairperson reminded the Committee of the procedure for the discussions that they had endorsed at the start of the discussion of the resolution.
748. The Government member of Canada proposed the replacement of the words “HIV/AIDS” with “HIV and AIDS” throughout the text for consistency.
749. The Government member of Nigeria supported the proposal from Canada and introduced another subamendment which sought to use “HIV and AIDS in the world of work” throughout the proposed resolution for consistency. The Government member of Ghana supported this proposal and noted that the world of work was a broader concept.
750. The Government member of the United Kingdom supported the subamendment from Canada but declined to support for the subamendment from Nigeria. He argued that both the “world of work” and “workplace” were relevant in different parts of the proposed resolution.
751. The Employer Vice-Chairperson agreed with the comments from the United Kingdom and added that both “world of work” and “workplace” should be used as appropriate in the text. The Employers’ group did not support the subamendment from Nigeria. The Worker Vice-Chairperson concurred with this position.
752. The Chairperson of the Committee noted that there was insufficient support for the subamendment of the Government member of Nigeria. The subamendment of the Government member of Canada had sufficient support.
753. Paragraph 2 was adopted as amended.

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### **Paragraph 3**

- 754.** The Government member of Spain, speaking on behalf of the IMEC group and EU Member States Government members of the Committee, explained that there was the need to arrange the text so that important organizations like UNAIDS were given preference. For this reason, she suggested that the words “through UNAIDS” be inserted in the first sentence.” She suggested that not only should the views of organizations of people living with HIV and AIDS be sought, but they should more importantly be considered as partners. She proposed a subamendment to delete the words “taking into account” from the text.
- 755.** The Government member of Ghana, speaking on behalf of the Africa group Government members of the Committee, did not support the subamendment from the IMEC group Government members of the Committee. She argued that this Recommendation would not be implemented through UNAIDS.
- 756.** The Worker and Employer Vice-Chairpersons both opposed the subamendment from the IMEC group Government members of the Committee. Both agreed that the Recommendation was primarily for the tripartite constituents and would engender a process that would receive inputs from other organizations such as UNAIDS, but UNAIDS was not expected to play a lead role in the execution of the proposed Recommendation.
- 757.** The Government member of the United Kingdom reminded the members of the Committee that ILO was part of UNAIDS and it was critical to make efforts to minimize duplication; there was therefore a need to integrate the global action plan into the UNAIDS global strategy.
- 758.** The Government member of France suggested a subamendment which sought to replace the word “through” with the word “with”.
- 759.** The Employer Vice-Chairperson argued that UNAIDS did not sit on the Governing Body of the ILO and the proposed resolution was for the Governing Body to implement. He introduced a subamendment which sought to give UNAIDS increased prominence in line with the sentiments expressed by the IMEC group Government members of the Committee.
- 760.** The Government member of the United Kingdom, speaking on behalf of the IMEC group Government members of the Committee, supported the subamendment from the Employers’ group.
- 761.** Paragraph 3 was adopted as amended.

### **Paragraph 4**

- 762.** The Government member of France, on behalf of IMEC group Government members of the Committee, called for a deletion of the words “Director-General” in paragraph 4 of the proposed resolution. He also pointed out that reference to Members and most representative employers’ and workers’ organizations was redundant. In this regard he proposed to change “Members” to “member States”.
- 763.** The representative of the Legal Adviser explained that the reference to the Director-General as used in the text was accurate and consistent with the tasks of this position.

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Clause 4(a)

- 764.** The Government member of the United Kingdom proposed to add the words “to meet the requirements of this Recommendation relevant to the world of work” at the end of the clause.
- 765.** The Government member of Denmark, also speaking on behalf of the Government members of Norway and the United States, supported this suggestion. The Government member of Zambia said that while he supported the reference to the requirements of the Recommendation, the words “relevant to the world of work” should be deleted.
- 766.** The Employer and the Worker Vice-Chairpersons supported the subamendment from the Government member of Zambia. The Government member of South Africa, speaking on behalf of the Africa group Government members of the Committee, also supported the subamended text.

Clause 4(b)

- 767.** The Government member of Zambia proposed replacing the words “for example” with “among other things”.
- 768.** The Government member of Brazil seconded the subamendment.
- 769.** The Employer and Worker Vice-Chairpersons, the Government member of South Africa, speaking on behalf of the Africa group Government members of the Committee, and the Government member of Australia did not support the subamendment and preferred to retain the words “for example”.
- 770.** The Government member of Australia said that “support and building capacity” also required an editorial change in English.
- 771.** The Worker Vice-Chairperson suggested replacing “support” by “supporting”.
- 772.** The Employer Vice-Chairperson said that would alter the meaning of the text, which was intended to mean providing support and building capacity not “to support capacity building.”
- 773.** The Government member of Canada proposed inserting the word “providing” before “support”.
- 774.** The Employer and Worker Vice-Chairpersons and the Government member of the United States supported the subamendment as proposed by the Government member of Canada.
- 775.** Paragraph 4 was adopted as amended.

**Paragraph 5**

- 776.** The Government member of Nigeria proposed to delete the word “and” between “AIDS” and “relevant”. The Government member of Australia seconded this proposal.
- 777.** Paragraph 5 was adopted as amended.

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## **Paragraph 6**

- 778.** The Worker Vice-Chairperson proposed adding the words “of the ILO Constitution” after the words “article 19” and inserting the word “existing” before “reporting mechanisms”.
- 779.** The Employer Vice-Chairperson and the Government member of South Africa, speaking on behalf of the Africa group Government members of the Committee, supported the subamendment from the Workers’ group.
- 780.** The Government member of Nigeria said that while he supported the subamendment, he would appreciate an explanation of why reference had been made to reports on social protection.
- 781.** The Worker Vice-Chairperson explained that many Recommendations and Conventions had follow-up and reporting mechanisms, which were classified according to certain groups. The agenda on HIV/AIDS would fit into the existing reporting structure for social protection.
- 782.** The Employer Vice-Chairperson proposed replacing the words “representatives of” with the words “the most representative”. This was in line with standard Office wording.
- 783.** The Worker Vice-Chairperson supported this suggestion.
- 784.** The Government member of Argentina pointed out that “further” should have been deleted.
- 785.** The Government member of Denmark, asked whether the Conference or the Governing Body had the authority to categorize an instrument.
- 786.** A representative of the Office replied that the categorization of the instrument was the responsibility of the Sector on Social Protection of the Governing Body of the International Labour Office.
- 787.** The Government member of Nigeria said that in light of that explanation, the words “such as” should be deleted before “recurrent reports”.
- 788.** The Government member of Denmark, also speaking on behalf of the Government member of Norway, said that the rest of that sentence should also be deleted, thus ending the sentence with the words “reporting mechanisms”.
- 789.** The Government member of the United Kingdom supported that proposal.
- 790.** The Worker Vice-Chairperson asked who would decide to which reporting mechanism the resolution would apply if it was not specified.
- 791.** The representative of the Legal Adviser said that the question had been discussed with the Standards Department, and it had been decided that the term “General Survey” would be appropriate, since those reports fed into recurrent reports.
- 792.** The Worker Vice-Chairperson asked to which reporting mechanism occupational health and safety applied.
- 793.** The representative of the Legal Adviser replied that occupational health and safety came within the purview of social protection.



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- 794.** The Worker Vice-Chairperson expressed concern about the deletion of the reference to social protection.
- 795.** A representative of the Office suggested inserting after “reporting mechanisms” the words, “in particular General Surveys”. He also pointed out that “agreed” should be replaced by “prepared” in order to be in line with standard Office wording.
- 796.** The Worker Vice-Chairperson asked who would decide the appropriate reporting mechanism in this case.
- 797.** The Government member of Canada, seconded by the Government member of the Netherlands, proposed replacing the words “ensure that regular reports are requested” by the words “request reports from”. This would make the language more concise.
- 798.** The Worker Vice-Chairperson did not support the amendment and pointed out that the purpose of the instrument was to show the urgency of the pandemic. He pointed out that his country, Swaziland, had one of the smallest populations in the world, with just over 1 million people, but had the highest HIV prevalence in the world. If urgent measures were not taken, the population would decrease to 225,000 people by 2025. The situation in many countries was urgent, and regular reporting would support serious attention to making progress at the country level.
- 799.** The Employer Vice-Chairperson agreed with the Government member of the United Kingdom and suggested inserting the word “regular” before “reports” to meet the Workers’ concerns.
- 800.** The Government member of Austria, seconded by the Government member of Norway, proposed replacing “including” by “may include” in the last sentence.
- 801.** The Employer Vice-Chairperson supported this proposal.
- 802.** The Worker Vice-Chairperson requested an explanation for the proposal.
- 803.** The Government member of Austria pointed out that it could be complicated and expensive to compile collections of good practices, particularly for enterprises.
- 804.** The Worker Vice-Chairperson rejected this proposal. He suggested inserting the words “where possible” before the words “examples of good practice”. This version of the paragraph read: “Invites the Governing Body of the International Labour Office to request regular reports from member States under article 19 of the ILO Constitution as part of the existing reporting mechanisms, in particular General Surveys. Governments’ reports relating to HIV and AIDS should be prepared in consultation with the most representative employers’ and workers’ organizations including details of progress made and, where possible, examples of good practice”.
- 805.** The Employer Vice-Chairperson supported this proposal from the Workers’ group. The Government member of Kuwait, the Government member of South Africa, speaking on behalf of the Africa Group Government members of the Committee, and the Government member of the United Kingdom also expressed support for the Workers’ proposal.
- 806.** Paragraph 6 was adopted as amended.

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## **Paragraph 7**

- 807.** The Government member of France said that the word “requests” to address the Governing Body was not standard language and should be replaced with “invites.” The Government member of the United States and the Worker Vice-Chairperson concurred.
- 808.** Paragraph 7 was adopted as amended.

## **Paragraph 8**

- 809.** The Government member of the United States asked the Office to clarify the relevance of a Protocol for a Convention. If a Protocol were in place to include HIV/AIDS in the coverage of Convention No. 111, would it still be optional for countries to adopt? Would this be the case both for countries which had already ratified the Convention, and for countries which were to ratify it in the future?
- 810.** A representative of the Office confirmed that this was the case.
- 811.** The Worker Vice-Chairperson recalled that Convention No. 111 had been developed well before the HIV/AIDS pandemic. It was important to use the force behind Convention No. 111 to reduce HIV/AIDS stigma and discrimination, which was a major driver of the pandemic.
- 812.** The Government member of France asked whether a Protocol was the most strategic means of extending the scope of Convention No. 111. He further inquired whether it might be more effective to broaden the focus and emphasize the need to eliminate discrimination based on health status rather than highlighting the particular virus of HIV. Singling out HIV could have the unintended consequence of reinforcing stigma and discrimination.
- 813.** The Worker Vice-Chairperson explained that HIV was exceptional and needed special focus. There were two aspects of discrimination mentioned in Convention No. 111: in 1(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and in 1(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies.
- 814.** High-level protection for HIV should be recognized in 1(a). If it were to be included in 1(b), protection for people with HIV would become optional. Protocols were important because they had the potential ability to ensure the continued relevance of Conventions over time.
- 815.** A representative of the Legal Adviser explained that there were three options for consideration by the Committee. One would be to review or revise Convention No. 111. He advised against that option since Convention No. 111 was one of the most ratified Conventions and any revision would require member States to ratify the new, revised instrument. Another option would be to pursue the development of a Protocol. However, a Protocol also required ratification and countries that had ratified Convention No. 111, to which the Protocol would be formally attached, would not necessarily ratify a Protocol. The third option would be to strongly encourage member States to make a declaration under Article 1(1)(b) of Convention No. 111 to include HIV as grounds for non-discrimination. He noted that Report V(2B) had supported such an option.

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- 816.** The Worker Vice-Chairperson noted that the first option was not feasible, since Governments did not need to be motivated about the seriousness of the issue, nor should they be pressured to act. The option to revise Convention No. 111 was also not feasible. Convention No. 111 had been developed at a time when discrimination was a major issue of concern to countries. The decision for a Protocol could not be based on the fact that some countries had laws regarding health status. An HIV-positive person was not necessarily an ill person and would not fall under the category of ill health. A Protocol would provide the flexibility of extending protection against discrimination on the basis of HIV.
- 817.** The Employer Vice-Chairperson noted that speed and urgency of action were critical and he was concerned that, after the process of developing a Protocol, it may end up being ineffective. He felt that the best approach to link HIV/AIDS to Convention No. 111 would be to advocate for it at the country level.
- 818.** The Government member from the United Kingdom agreed that issues of timing and urgency were paramount. Pursuing the process for a Protocol would be time-consuming since one had to first get the issue on the agenda of the Conference, and then it would have to compete for visibility with other items on the agenda.
- 819.** The Government member of France corrected the misinterpretation of his earlier intervention, explaining that he had not stated that there was anti-discrimination legislation based on illness. Rather, such legislation was based on the state of health. Countries with such legislation, for example France, aimed at broad protection for all people regardless of health status.
- 820.** The Government member of the United States stated that Paragraph 9 of the Recommendation, which urged states to provide protection equal to Convention No. 111, offered a faster route to action than a possible Protocol. Paragraph 9 also provided the impetus to national governments which had already ratified Convention No. 111, to include HIV/AIDS in the scope of the Convention's coverage, as allowed in Article 1(1)(b) of the Convention.
- 821.** The Worker Vice-Chairperson pointed out that it would not be easy to motivate countries to establish declarations to Convention No. 111. Such requests could become politicized. High-level international commitment was needed to link HIV/AIDS to the implementation of Convention No. 111.
- 822.** The Worker Vice-Chairperson then proposed a subamendment. The text read: "Further invites the Governing Body to promote to Members the extension under Article 1(1)(b) of Convention No. 111 so that the protection afforded under that Convention is extended to real or perceived HIV/AIDS status."
- 823.** The Government member of the United States proposed that the word "further" be deleted. The Employer Vice-Chairperson said that the proposed paragraph, as revised by the Workers' group and the Government member of the United States, was an elegant solution. The Government members of Austria, Belgium, Chad, Finland, France, the Netherlands, Norway, speaking on behalf of Norway and Denmark, South Africa, speaking on behalf of the Africa group Government members of the Committee, Spain and the United Kingdom, also supported this position.
- 824.** Paragraph 8 was adopted as amended.
- 825.** The Committee adopted the draft resolution as amended.

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- 826.** The Chairperson congratulated the Committee for its productive and fruitful work. She called for any statements and invited the delegate from the Brazilian network of People Living with HIV/AIDS to speak.
- 827.** The delegate said that it was with much emotion that he had witnessed the conclusion of the work on HIV/AIDS. He thanked the Committee for their commitment, their work to promote human rights and their open mindedness. Their work would help reduce the stigma and discrimination attached to HIV.
- 828.** The representative of the Secretary-General, Dr Sophia Kisting, congratulated the Committee and the supporting staff for their hard work. The amended text was much richer as a result of all the contributions that had been made by various Members.

## **Adoption of the report**

- 829.** The Government member of Australia, speaking on behalf of the Reporter of the Committee, introduced the draft report on the work of the Committee. The Committee Drafting Committee had worked hard to finalize the proposed Recommendation. The report reflected the constructive spirit of the Committee's dialogue, which had been an outstanding example of tripartism in action, and of sustained commitment by all participants. The Recommendation would be a crucial gateway to prevention, treatment, care and support. The Committee's work had resulted in the drafting of the first international standard on HIV and AIDS.
- 830.** The report was adopted with minor amendments.

## **Adoption of the proposed Recommendation**

- 831.** The Committee turned to the Recommendation on HIV and AIDS and the world of work. The Worker Vice-Chairperson sought clarification on the way ILO Conventions and Recommendations were cited in the Recommendation, and inquired why the numbers of the instruments were not included. The representative of the Legal Adviser explained that the official short titles of ILO standards did not include the numbers of the instruments. These were assigned later by the Office for ease of reference, but did not constitute part of the official title. It was standard to cite Conventions and Recommendations with their official titles in ILO instruments.
- 832.** The Employer Vice-Chairperson had two comments concerning the draft text. First, he noted that in Paragraph 14(f), the French version included the word "encouraging" which was not included in other translations. He requested that the word "encouraging" in the French version be deleted. Second, in Paragraph 29, reference had been made to "rights set out in Paragraphs 24 to 28". What had been agreed in the Committee's discussions was the phrase "rights as set out above", to make sure that the concept of rights included references to ILO standards in the text in accordance with the explanation provided on this point by a representative of the Office when the relevant provision was adopted.
- 833.** The Chairperson noted that the word "encouraging" in Paragraph 14(f) in the French text would be removed to match the other two language versions. After consultation among the Committee's officers, the Employer Vice-Chairperson proposed that the Committee adopt an amendment to replace, in Paragraph 29, the words "set out in Paragraphs 24 to 28" with "as set out above". The Committee adopted the amendment.
- 834.** The Committee adopted the Recommendation as a whole.

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## Closing remarks

- 835.** The Government member of France, speaking on behalf of the IMEC group Government members of the Committee, said that he was very pleased that the draft Recommendation had been adopted. It was the first international labour standard dealing with HIV at a global level. He thanked the Employers' and Workers' groups and the GRULAC group and the Africa group Government members of the Committee for their collaboration. The work undertaken and the progress made would not have been possible without the coordinators and social partners. He said that the instrument had been strengthened in a number of areas during the discussions this year, including protection of workers and health and safety at work. While they would have liked the instrument to have greater legal rigour they were pleased with the overall result. He stressed that the work was only just beginning with the instrument's adoption; the most important aspect was effective implementation. He urged everyone to mobilize in order to ensure that the instrument was effectively implemented, which not only applied to the workplace but would also act as a lever to combat HIV in a broader context.
- 836.** The Government member of Namibia, speaking on behalf of the Africa group Government members of the Committee, said that they appreciated the Committee's work and professionalism, especially with regard to reaching consensus in their deliberations. She hoped that the Committee would continue to show the same spirit when it came to financial and technical resources for the implementation of the Recommendation at the national level.
- 837.** The Government member of Kuwait said that she had been delighted and impressed by the Committee's work, especially the adoption of the Recommendation and the report. The work they had carried out together showed that they all had the same aim: combating the scourge of HIV and ensuring that people living with HIV had the same rights as anyone else.
- 838.** The Government member of Argentina, speaking on behalf of the GRULAC group Government members of the Committee, acknowledged the importance of the draft Recommendation but said that the road ahead was long. He called for commitment in implementing the instrument.
- 839.** The Government member of Algeria said that she was proud to have been part of the Committee. The Committee had risen to the challenge and produced an instrument that could be used in the workplace. It was important because of the coverage it afforded workers and their families.
- 840.** The Employer Vice-Chairperson said that the Recommendation represented an epic moment. The second discussion of the draft Recommendation had been a pure example of tripartite dialogue. Members from different countries, cultures and languages had drafted an instrument that could be implemented in different national contexts. They had started out cautiously but had become good friends over the course of the discussions. The instrument had met the expectations of the Committee and he hoped it would meet the expectations of the outside world. The time had come to implement the Recommendation, and the force of this instrument would be known through its achievements in responding to HIV and AIDS.
- 841.** The Worker Vice-Chairperson said that the process had started with the ILO code of practice, which had had a major impact globally. After considerable success in its implementation, there was a need to create a stronger instrument. Although they had begun by hoping for a Convention, in the end the Workers' group had agreed on a Recommendation, in view of the commitment shown by the Committee to create a more

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powerful instrument. The process had been an example of social dialogue. In order to eliminate the pandemic it was necessary to eliminate stigma and discrimination. It was necessary to create a non-threatening environment that would encourage voluntary testing. It was essential that people knew their status. He urged Committee members to lead by example and be tested for HIV publicly and regularly. All parties were committed to the instrument, but the necessary resources would have to be made available to assist in its implementation and ensure that it would be translated into national legislation and action. He implored the Government members to implement the instrument in their countries, and he hoped that the tripartite spirit he had seen in this Committee would be reflected in future Committees.

**842.** The representative of the Secretary-General expressed her gratitude, satisfaction and pride in the adoption of a strong standard that would take the interventions of the world of work to a higher level in the global response to HIV/AIDS with a specific emphasis on prevention. The instrument belonged to all governments, employers and workers as well as all those living with and affected by HIV. The instrument would be relevant to high HIV prevalence and low HIV prevalence countries alike, and its adoption honoured all those who had lost their lives to HIV. The adoption and implementation of the instrument represented a significant contribution of the world of work to the establishment of a future HIV-free generation. The forthcoming meeting of the UNAIDS Programme Coordinating Board, to be held at the ILO, would be an excellent opportunity to present the new instrument, which would contribute to universal access to prevention, treatment, care and support. The forthcoming International AIDS Conference in Vienna would provide the opportunity to hold a partnership forum to discuss ways of broadening the partnerships to facilitate implementation of the new instrument. Referring to “Devotions Upon Emergent Occasions” by John Donne, she said that any man, woman or child’s death diminished all humankind. She welcomed the spirit in which the new instrument had been adopted, and emphasized that the Office would be ready to support all stakeholders in its implementation. She thanked all those who had participated in the work of the Committee.

**843.** The Chairperson expressed her thanks to all participants in the Committee’s work for their mutual support and commitment, which had resulted in the enthusiastic and unanimous support for a meaningful international instrument on HIV/AIDS in the workplace. The instrument was strong enough to protect those affected by the pandemic, and was a product of the perseverance, patience and commitment of all participants in the Committee’s work. The crafting and adoption of such an instrument should be a source of pride for the ILO and its tripartite constituents. She thanked all those who had contributed to the work of the Committee, and in particular, those members of the Committee living with HIV who had given very moving testimonies, which had enriched the Committee’s work. All Members should now strive to align their national policies and legislation with the outcome of the Conference, in order to enable the instrument to enhance the protection of the rights of persons living with HIV and to ensure that discrimination and stigma had no place at work. She thanked all those who had contributed to the success of the Committee’s work and the adoption of the instrument. She particularly wished to thank the two Vice-Chairpersons for their dedication and commitment. She declared the present session of the Committee closed.

Geneva, 14 June 2010

*(Signed)* T. Nene-Shezi  
Chairperson

P. Mooney  
Reporter

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## Recommendation on HIV and AIDS and the world of work

- The General Conference of the International Labour Organization,  
Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 99th Session on 2 June 2010, and
- Noting that HIV and AIDS have a serious impact on society and economies, on the world of work in both the formal and informal sectors, on workers, their families and dependants, on the employers' and workers' organizations and on public and private enterprises, and undermine the attainment of decent work and sustainable development, and
- Reaffirming the importance of the International Labour Organization's role in addressing HIV and AIDS in the world of work and the need for the Organization to strengthen its efforts to achieve social justice and to combat discrimination and stigmatization with regard to HIV and AIDS in all aspects of its work and mandate, and
- Recalling the importance of reducing the informal economy by attaining decent work and sustainable development in order to better mobilize the world of work in the response to HIV and AIDS, and
- Noting that high levels of social and economic inequality, lack of information and awareness, lack of confidentiality and insufficient access to and adherence to treatment, increase the risk of HIV transmission, mortality levels, the number of children who have lost one or both parents and the number of workers engaged in informal work, and
- Considering that poverty, social and economic inequality and unemployment increase the risk of lack of access to prevention, treatment, care and support, therefore increasing the risk of transmission, and
- Noting that stigma, discrimination and the threat of job loss suffered by persons affected by HIV or AIDS are barriers to knowing one's HIV status, thus increasing the vulnerability of workers to HIV and undermining their right to social benefits, and
- Noting that HIV and AIDS have a more severe impact on vulnerable and at-risk groups, and
- Noting that HIV affects both men and women, although women and girls are at greater risk and more vulnerable to HIV infection and are disproportionately affected by the HIV pandemic compared to men as a result of gender inequality, and that women's empowerment is therefore a key factor in the global response to HIV and AIDS, and
- Recalling the importance of safeguarding workers through comprehensive occupational safety and health programmes, and
- Recalling the value of the ILO code of practice – *An ILO code of practice on HIV/AIDS and the world of work, 2001* – and the need to strengthen its impact given that there are limits and gaps in its implementation, and
- Noting the need to promote and implement the international labour Conventions and Recommendations and other international instruments that are relevant to HIV and AIDS and the world of work, including those that recognize the right to the highest attainable standard of health and to decent living standards, and
- Recalling the specific role of employers' and workers' organizations in promoting and supporting national and international efforts in response to HIV and AIDS in and through the world of work, and

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Noting the important role of the workplace as regards information about and access to prevention, treatment, care and support in the national response to HIV and AIDS, and

Affirming the need to continue and increase international cooperation, in particular in the context of the Joint United Nations Programme on HIV/AIDS, to support efforts to give effect to this Recommendation, and

Recalling the value of collaboration at the national, regional and international levels with the structures dealing with HIV and AIDS, including the health sector and with relevant organizations, especially those representing persons living with HIV, and

Affirming the need to set an international standard in order to guide governments and organizations of employers and workers in defining their roles and responsibilities at all levels, and

Having decided upon the adoption of certain proposals with regard to HIV and AIDS and the world of work, and

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

adopts this ... day of June of the year two thousand and ten the following Recommendation, which may be cited as the HIV and AIDS Recommendation, 2010.

## I. DEFINITIONS

1. For the purposes of this Recommendation:

- (a) “HIV” refers to the human immunodeficiency virus, a virus that damages the human immune system. Infection can be prevented by appropriate measures;
- (b) “AIDS” refers to the acquired immunodeficiency syndrome which results from advanced stages of HIV infection, and is characterized by opportunistic infections or HIV-related cancers, or both;
- (c) “persons living with HIV” means persons infected with HIV;
- (d) “stigma” means the social mark that, when associated with a person, usually causes marginalization or presents an obstacle to the full enjoyment of social life by the person infected or affected by HIV;
- (e) “discrimination” means any distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, as referred to in the Discrimination (Employment and Occupation) Convention, and Recommendation, 1958;
- (f) “affected persons” means persons whose lives are changed by HIV or AIDS owing to the broader impact of the pandemic;
- (g) “reasonable accommodation” means any modification or adjustment to a job or to the workplace that is reasonably practicable and enables a person living with HIV or AIDS to have access to, or participate or advance in, employment;
- (h) “vulnerability” means the unequal opportunities, social exclusion, unemployment or precarious employment, resulting from the social, cultural, political and economic factors that make a person more susceptible to HIV infection and to developing AIDS;



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- (i) “workplace” refers to any place in which workers perform their activity; and
  - (j) “worker” refers to any persons working under any form or arrangement.

## II. SCOPE

2. This Recommendation covers:

- (a) all workers working under all forms or arrangements, and at all workplaces, including:
  - (i) persons in any employment or occupation;
  - (ii) those in training, including interns and apprentices;
  - (iii) volunteers;
  - (iv) jobseekers and job applicants; and
  - (v) laid-off and suspended workers;
- (b) all sectors of economic activity, including the private and public sectors and the formal and informal economies; and
- (c) armed forces and uniformed services.

## III. GENERAL PRINCIPLES

3. The following general principles should apply to all action involved in the national response to HIV and AIDS in the world of work:

- (a) the response to HIV and AIDS should be recognized as contributing to the realization of human rights and fundamental freedoms and gender equality for all, including workers, their families and their dependants;
- (b) HIV and AIDS should be recognized and treated as a workplace issue, which should be included among the essential elements of the national, regional and international response to the pandemic with full participation of organizations of employers and workers;
- (c) there should be no discrimination against or stigmatization of workers, in particular jobseekers and job applicants, on the grounds of real or perceived HIV status or the fact that they belong to regions of the world or segments of the population perceived to be at greater risk of or more vulnerable to HIV infection;
- (d) prevention of all means of HIV transmission should be a fundamental priority;
- (e) workers, their families and their dependants should have access to and benefit from prevention, treatment, care and support in relation to HIV and AIDS, and the workplace should play a role in facilitating access to these services;
- (f) workers’ participation and engagement in the design, implementation and evaluation of national and workplace programmes should be recognized and reinforced;

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- (g) workers should benefit from programmes to prevent specific risks of occupational transmission of HIV and related transmissible diseases, such as tuberculosis;
  - (h) workers, their families and their dependants should enjoy protection of their privacy, including confidentiality related to HIV and AIDS, in particular with regard to their own HIV status;
  - (i) no workers should be required to undertake an HIV test or disclose their HIV status;
  - (j) measures to address HIV and AIDS in the world of work should be part of national development policies and programmes, including those related to labour, education, social protection and health; and
  - (k) the protection of workers in occupations that are particularly exposed to the risk of HIV transmission.

#### IV. NATIONAL POLICIES AND PROGRAMMES

##### 4. Members should:

- (a) adopt national policies and programmes on HIV and AIDS and the world of work and on occupational safety and health, where they do not already exist; and
- (b) integrate their policies and programmes on HIV and AIDS and the world of work in development plans and poverty reduction strategies, including decent work, sustainable enterprises and income-generating strategies, as appropriate.

5. In developing the national policies and programmes, the competent authorities should take into account the ILO code of practice on HIV/AIDS of 2001, and any subsequent revision, other relevant ILO instruments, and other international guidelines adopted on this subject.

6. The national policies and programmes should be developed by the competent authorities, in consultation with the most representative organizations of employers and workers, as well as organizations representing persons living with HIV, taking into account the views of relevant sectors, especially the health sector.

7. In developing the national policies and programmes, the competent authorities should take into account the role of the workplace in prevention, treatment, care and support, including the promotion of voluntary counselling and testing, in collaboration with local communities.

8. Members should take every opportunity to disseminate information about their policies and programmes on HIV and AIDS and the world of work through organizations of employers and workers, other relevant HIV and AIDS entities, and public information channels.

##### *Discrimination and promotion of equality of opportunity and treatment*

9. Governments, in consultation with the most representative organizations of employers and workers should consider affording protection equal to that available under the Discrimination (Employment and Occupation) Convention, 1958, to prevent discrimination based on real or perceived HIV status.

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10. Real or perceived HIV status should not be a ground of discrimination preventing the recruitment or continued employment, or the pursuit of equal opportunities consistent with the provisions of the Discrimination (Employment and Occupation) Convention, 1958.

11. Real or perceived HIV status should not be a cause for termination of employment. Temporary absence from work because of illness or care giving duties related to HIV or AIDS should be treated in the same way as absences for other health reasons, taking into account the Termination of Employment Convention, 1982.

12. When existing measures against discrimination in the workplace are inadequate for effective protection against discrimination in relation to HIV and AIDS, Members should adapt these measures or put new ones in place, and provide for their effective and transparent implementation.

13. Persons with HIV-related illness should not be denied the possibility of continuing to carry out their work, with reasonable accommodation if necessary, for as long as they are medically fit to do so. Measures to redeploy such persons to work reasonably adapted to their abilities, to find other work through training or to facilitate their return to work should be encouraged, taking into consideration the relevant International Labour Organization and United Nations instruments.

14. Measures should be taken in or through the workplace to reduce the transmission of HIV and alleviate its impact by:

- (a) ensuring respect for human rights and fundamental freedoms;
- (b) ensuring gender equality and the empowerment of women;
- (c) ensuring actions to prevent and prohibit violence and harassment in the workplace;
- (d) promoting the active participation of both women and men in the response to HIV and AIDS;
- (e) promoting the involvement and empowerment of all workers regardless of their sexual orientation and whether or not they belong to a vulnerable group;
- (f) promoting the protection of sexual and reproductive health and sexual and reproductive rights of women and men; and
- (g) ensuring the effective confidentiality of personal data, including medical data.

### *Prevention*

15. Prevention strategies should be adapted to national conditions and the type of workplace, and should take into account gender, cultural, social and economic concerns.

16. Prevention programmes should ensure:

- (a) that accurate, up to date, relevant and timely information is made available and accessible to all in a culturally sensitive format and language through the different channels of communication available;
- (b) comprehensive education programmes to help women and men understand and reduce the risk of all modes of HIV transmission, including mother-to-child

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transmission, and understand the importance of changing risk behaviours related to infection;

- (c) effective occupational safety and health measures;
- (d) measures to encourage workers to know their own HIV status through voluntary counselling and testing;
- (e) access to all means of prevention, including but not limited to guaranteeing the availability of necessary supplies, in particular male and female condoms and, where appropriate, information about their correct use, and the availability of post-exposure prophylaxis;
- (f) effective measures to reduce high-risk behaviours, including for the most at-risk groups, with a view to decreasing the incidence of HIV; and
- (g) harm reduction strategies based on guidelines published by the World Health Organization (WHO), the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the United Nations Office on Drugs and Crime (UNODC) and other relevant guidelines.

#### *Treatment and care*

17. Members should ensure that their national policies and programmes on workplace health interventions are determined in consultation with employers and workers and their representatives and are linked to public health services. They should offer the broadest range of appropriate and effective interventions to prevent HIV and AIDS and manage their impact.

18. Members should ensure that workers living with HIV and their dependants benefit from full access to health care, whether this is provided under public health, social security systems or private insurance or other schemes. Members should also ensure the education and awareness raising of workers to facilitate their access to health care.

19. All persons covered by this Recommendation, including workers living with HIV and their families and their dependants, should be entitled to health services. These services should include access to free or affordable:

- (a) voluntary counselling and testing;
- (b) antiretroviral treatment and adherence education, information and support;
- (c) proper nutrition consistent with treatment;
- (d) treatment for opportunistic infections and sexually transmitted infections, and any other HIV-related illnesses, in particular tuberculosis; and
- (e) support and prevention programmes for persons living with HIV, including psychosocial support.

20. There should be no discrimination against workers or their dependants based on real or perceived HIV status in access to social security systems and occupational insurance schemes, or in relation to benefits under such schemes, including for health care and disability, and death and survivors' benefits.

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### *Support*

21. Programmes of care and support should include measures of reasonable accommodation in the workplace for persons living with HIV or HIV-related illnesses, with due regard to national conditions. Work should be organized in such a way as to accommodate the episodic nature of HIV and AIDS, as well as possible side effects of treatment.

22. Members should promote the retention in work and recruitment of persons living with HIV. Members should consider extending support through periods of employment and unemployment, including where necessary, income-generating opportunities for persons living with HIV or persons affected by HIV or AIDS.

23. Where a direct link can be established between an occupation and the risk of infection, AIDS and infection by HIV should be recognized as an occupational disease or accident, in accordance with national procedures and definitions, and with reference to the List of Occupational Diseases Recommendation, 2002, as well as other relevant International Labour Organization instruments.

### *Testing, privacy and confidentiality*

24. Testing must be genuinely voluntary and free of any coercion and testing programmes must respect international guidelines on confidentiality, counselling and consent.

25. HIV testing or other forms of screening for HIV should not be required of workers, including migrant workers, jobseekers and job applicants.

26. The results of HIV testing should be confidential and not endanger access to jobs, tenure, job security or opportunities for advancement.

27. Workers, including migrant workers, jobseekers and job applicants, should not be required by countries of origin, of transit or of destination to disclose HIV-related information about themselves or others. Access to such information should be governed by rules of confidentiality consistent with the ILO code of practice on the protection of workers' personal data, 1997, and other relevant international data protection standards.

28. Migrant workers, or those seeking to migrate for employment, should not be excluded from migration by the countries of origin, of transit or of destination on the basis of their real or perceived HIV status.

29. Members should have in place easily accessible dispute resolution procedures which ensure redress for workers if their rights set out above are violated.

### *Occupational safety and health*

30. The working environment should be safe and healthy, in order to prevent transmission of HIV in the workplace, taking into account the Occupational Safety and Health Convention, 1981, and Recommendation, 1981, the Promotional Framework for Occupational Safety and Health Convention, 2006, and Recommendation, 2006, and other relevant international instruments, such as joint International Labour Office and WHO guidance documents.

31. Safety and health measures to prevent workers' exposure to HIV at work should include universal precautions, accident and hazard prevention measures, such as

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organizational measures, engineering and work practice controls, personal protective equipment, as appropriate, environmental control measures and post-exposure prophylaxis and other safety measures to minimize the risk of contracting HIV and tuberculosis, especially in occupations most at risk, including in the health-care sector.

32. When there is a possibility of exposure to HIV at work, workers should receive education and training on modes of transmission and measures to prevent exposure and infection. Members should take measures to ensure that prevention, safety and health are provided for in accordance with relevant standards.

33. Awareness-raising measures should emphasize that HIV is not transmitted by casual physical contact and that the presence of a person living with HIV should not be considered a workplace hazard.

34. Occupational health services and workplace mechanisms related to occupational safety and health should address HIV and AIDS, taking into account the Occupational Health Services Convention, 1985, and Recommendation, 1985, the *Joint ILO/WHO guidelines on health services and HIV/AIDS*, 2005, and any subsequent revision, and other relevant international instruments.

### *Children and young persons*

35. Members should take measures to combat child labour and child trafficking that may result from the death or illness of family members or caregivers due to AIDS and to reduce the vulnerability of children to HIV, taking into account the ILO Declaration on Fundamental Principles and Rights at Work, 1998, the Minimum Age Convention, 1973, and Recommendation, 1973, and the Worst Forms of Child Labour Convention, 1999, and Recommendation, 1999. Special measures should be taken to protect these children from sexual abuse and sexual exploitation.

36. Members should take measures to protect young workers against HIV infection, and to include the special needs of children and young persons in the response to HIV and AIDS in national policies and programmes. These should include objective sexual and reproductive health education, in particular the dissemination of information on HIV and AIDS through vocational training and in youth employment programmes and services.

## V. IMPLEMENTATION

37. National policies and programmes on HIV and AIDS and the world of work should:

(a) be given effect, in consultation with the most representative organizations of employers and workers and other parties concerned including relevant public and private occupational health structures, by one or a combination of the following means:

(i) national laws and regulations;

(ii) collective agreements;

(iii) national and workplace policies and programmes of action; and

(iv) sectoral strategies, with particular attention to sectors in which persons covered by this Recommendation are most at risk;

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- (b) involve the judicial authorities competent in labour issues, and labour administration authorities in the planning and implementation of the policies and programmes, and training in this regard should be provided to them;
  - (c) provide for measures in national laws and regulations to address breaches of privacy and confidentiality and other protection afforded under this Recommendation;
  - (d) ensure collaboration and coordination among the public authorities and public and private services concerned, including insurance and benefit programmes or other types of programmes;
  - (e) promote and support all enterprises to implement the national policies and programmes, including through their supply chains and distribution networks, with the participation of organizations of employers and workers and ensure that enterprises operating in the export processing zones comply;
  - (f) promote social dialogue, including consultation and negotiation, consistent with the Tripartite Consultation (International Labour Standards) Convention, 1976, 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 and AIDS, and other parties including organizations representing persons living with HIV, international organizations, relevant civil society organizations and country coordinating mechanisms;
  - (g) be formulated, implemented, regularly reviewed and updated, taking into consideration the most recent scientific and social developments and the need to mainstream gender and cultural concerns;
  - (h) be coordinated with, among others, labour, social security and health policies and programmes; and
  - (i) ensure that Members make reasonable provision for the means of their implementation, with due regard to national conditions, as well as to the capacity of employers and workers.

### *Social dialogue*

38. Implementation of policies and programmes on HIV and AIDS should be based on cooperation and trust among employers and workers and their representatives, and governments, with the active involvement, at their workplace, of persons living with HIV.

39. Organizations of employers and workers should promote awareness of HIV and AIDS, including prevention and non-discrimination, through the provision of education and information to their members. These should be sensitive to gender and cultural concerns.

### *Education, training, information and consultation*

40. Training, safety instructions and any necessary guidance in the workplace related to HIV and AIDS should be provided in a clear and accessible form for all workers and, in particular, for migrant workers, newly engaged or inexperienced workers, young workers and persons in training, including interns and apprentices. Training, instructions and guidance should be sensitive to gender and cultural concerns and adapted to the characteristics of the workforce, taking into account the risk factors for the workforce.

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41. Up to date scientific and socio-economic information and, where appropriate, education and training on HIV and AIDS should be available to employers, managers and workers' representatives, in order to assist them in taking appropriate measures in the workplace.

42. Workers, including interns, trainees and volunteers should receive awareness-raising information and appropriate training in HIV infection control procedures in the context of workplace accidents and first aid. Workers whose occupations put them at risk of exposure to human blood, blood products and other body fluids should receive additional training in exposure prevention, exposure registration procedures and post-exposure prophylaxis.

43. Workers and their representatives should have the right to be informed and consulted on measures taken to implement workplace policies and programmes related to HIV and AIDS. Workers' and employers' representatives should participate in workplace inspections in accordance with national practice.

#### *Public services*

44. The role of the labour administration services, including the labour inspectorate, and of the judicial authorities competent in labour issues, in the response to HIV and AIDS, should be reviewed and, if necessary, strengthened.

45. Public health systems should be strengthened and follow the *Joint ILO/WHO guidelines on health services and HIV/AIDS*, 2005, and any subsequent revision, to help ensure greater access to prevention, treatment, care and support, and reduce the additional strain on public services, particularly on health workers, caused by HIV and AIDS.

#### *International cooperation*

46. Members should cooperate, through bilateral or multilateral agreements, through their participation in the multilateral system or through other effective means, in order to give effect to this Recommendation.

47. Measures to ensure access to HIV prevention, treatment, care and support services for migrant workers should be taken by countries of origin, of transit and of destination, and agreements should be concluded among the countries concerned, whenever appropriate.

48. International cooperation should be encouraged between and among Members, their national structures on HIV and AIDS and relevant international organizations and should include the systematic exchange of information on all measures taken to respond to the HIV pandemic.

49. Members and multilateral organizations should give particular attention to coordination and to the necessary resources to satisfy the needs of all countries, especially high prevalence countries, in the development of international strategies and programmes for prevention, treatment, care and support related to HIV.

50. Members and international organizations should seek to reduce the price of supplies of any type, for the prevention, treatment and care of infection caused by HIV and other opportunistic infections and HIV-related cancers.



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## VI. FOLLOW-UP

51. Members should establish an appropriate mechanism or make use of an existing one, for monitoring developments in relation to their national policy on HIV and AIDS and the world of work, as well as for formulating advice on its adoption and implementation.

52. The most representative organizations of employers and workers should be represented, on an equal footing, in the mechanism for monitoring developments in relation to the national policy. In addition, these organizations should be consulted under the mechanism as often as necessary taking into consideration the views of organizations of persons living with HIV, expert reports or technical studies.

53. Members should, to the extent possible, collect detailed information and statistical data and undertake research on developments at the national and sectoral levels in relation to HIV and AIDS in the world of work, taking into account the distribution of women and men and other relevant factors.

54. In addition to the reporting under article 19 of the Constitution of the International Labour Organization, a regular review of action taken on the basis of this Recommendation could be included in national reports to UNAIDS and reports under relevant international instruments.

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## Annex

### **Resolution concerning the promotion and the implementation of the Recommendation on HIV and AIDS and the world of work, 2010**

The General Conference of the International Labour Organization, meeting at its 99th Session, 2010,

Having adopted the Recommendation on HIV and AIDS and the world of work, 2010,

Noting that the success of the Recommendation will depend upon the effective promotion and implementation of its requirements,

Mindful that the core mandate of the Organization is to promote decent work and sustainable enterprises,

Noting the ILO's participation as a tripartite organization in the Joint United Nations' Programme on HIV/AIDS (UNAIDS) efforts to address HIV and AIDS,

1. Invites the Governing Body of the International Labour Office to allocate the resources within the existing budget and look for additional extra-budgetary resources to carry out the work with the tripartite constituents to give effect to the Recommendation in the world of work.

2. Invites the Governing Body to take action to promote collaborative efforts with the various international organizations concerning HIV and AIDS at the workplace.

3. Invites the Governing Body to request that a Global Action Plan be established to achieve widespread implementation of the Recommendation in order to reduce the impact of HIV and AIDS in the workplace. This should be developed with the representative employers' and workers' organizations, taking into account the views of UNAIDS, organizations representing persons living with HIV and AIDS, and other relevant parties.

4. Invites the Governing Body to request the Director-General to give due regard to fair allocation of the Office's technical cooperation resources to countries. Member States and the most representative workers' and employers' organizations may request assistance in the implementation of the Recommendation in areas such as:

- (a) technical assistance in developing and implementing tripartite national policies, programmes, and legislation to meet the requirements of this Recommendation;
- (b) providing support and building capacity to train, communicate, monitor, implement and advocate, for example:
  - (i) the development of training programmes and materials to build capacity, including those with a sectoral focus;
  - (ii) the training of workplace HIV and AIDS focal persons and educators, including employers' and workers' representatives and labour administrators;
  - (iii) the development of promotional materials and advocacy tools related to the Recommendation; and
  - (iv) national and regional seminars and workshops promoting the Recommendation.

5. Invites member States to use existing mechanisms or to establish mechanisms at the national level to review progress, and monitor developments and share examples of good practice in relation to the implementation of the national policies and programmes on HIV and AIDS relevant to the world of work.

6. Invites the Governing Body to request regular reports from member States under article 19 of the ILO Constitution as part of the existing reporting mechanisms, in particular General Surveys. Governments' reports relating to HIV and AIDS should be prepared in consultation with the most representative employers' and workers' organizations, including details of progress made and, where possible, examples of good practice.

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7. Invites the Governing Body to periodically review the progress made in the implementation of this Recommendation.

8. Invites the Governing Body to promote to member States the extension under Article 1(1)(b) of the Discrimination (Employment and Occupation) Convention, 1958 so that the protection afforded under that Convention is extended to real or perceived HIV status.

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## CONTENTS

	<i>Page</i>
<i>Fifth item on the agenda: HIV/AIDS and the world of work</i>	
Report of the Committee on HIV/AIDS .....	1
Recommendation on HIV and AIDS and the world of work .....	87
Resolution concerning the promotion and the implementation of the Recommendation on HIV and AIDS and the world of work, 2010 .....	98